S. HRG. 99-631

DEPARTMENT OF COMMERCE'S FIRST ANNUAL REPORT ON FOREIGN POLICY EXPORT CONTROLS

HEARING

BEFORE THE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS UNITED STATES SENATE

NINETY-NINTH CONGRESS

SECOND SESSION

ON

S. 2076

THE FIRST ANNUAL ORAL REPORT BY THE COMMERCE SECRETARY ON FOREIGN POLICY EXPORT CONTROLS; AUTHORIZATION OF APPROPRIATIONS FOR EXPORT ADMINISTRATION AND EXPORT PROMOTION ACTIVITIES OF THE COMMERCE DEPARTMENT

FEBRUARY 19, 1986

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DEPARTMENT OF COMMERCE'S FIRST ANNUAL REPORT ON FOREIGN POLICY EXPORT CONTROLS

WEDNESDAY, FEBRUARY 19, 1986

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
Washington, DC.

The committee met at 9:30 a.m., in room SD-538, Dirksen Senate Office Building, Senator Jake Garn (chairman) presiding.

Present: Senators Garn, Heinz, Armstrong, D'Amato, Gorton, Mattingly, Hecht, Proxmire, Cranston, and Dixon.

OPENING STATEMENT OF CHAIRMAN GARN

The CHAIRMAN. The Banking Committee will come to order.

Obviously, Secretary Baldrige is not familiar with the Banking Committee—oh, here he is. I was going to make excuses for you. We always start on time.

But we are here today to receive from the Secretary of Commerce, his first annual oral report on foreign policy export controls.

I welcome this opportunity, and I am sure we all do, to have Secretary Baldrige before the committee to examine the implementation and impact of the export control procedures Congress worked long and hard to establish, and which we finally enacted last year.

The 1985 amendments to the Export Administration Act resulted in many changes designed to protect the United States from the national security dangers of the transfer of sensitive goods and technologies to our adversaries. Undeniably, export controls can and should be administered in such a way as to provide U.S. exporters with fair and predictable rules, so they can compete in the international marketplace with the least amount of hindrance.

I believe this to be fully compatible with the primary imperative of exercising precaution in dealing with the Soviet bloc and other potential adversaries. That was what we tried to do in last year's legislation.

Today we will explore how well the implementation of the amended Export Administration Act seems to be responding to these two concerns, in addition to examining the administration's foreign policy controls.

With regard to U.S. foreign policy controls, one issue continually comes to mind—I have raised it before, and it refuses to go away. The International Emergency Economic Powers Act [IEEPA], rather than the Export Administration Act has been used recently

to impose export controls in some situations where there seems to me to be no true national emergency condition. In fact, it doesn't seem that way just to me. Assistant Treasury Secretary David Mulford stated before this committee in December that, there was no national emergency to justify the use of IEEPA powers to ban loans to South Africa.

Several of my colleagues in the Senate, including Senators D'Amato, Mattingly, Hatch, and the ranking minority member of this committee, Senator Proxmire, have joined with me in offering legislation to give the President the nonemergency authority that he currently lacks. Perhaps if our bill, S. 812, were enacted, there would be less temptation to resort to IEEPA in cases where it may not be appropriate.

The committee today will also examine legislation authorizing appropriations for the export administration and export control operations of the Commerce Department for the next few years.

[Copy of the proposed bill S. 2076 follows:]

II

99TH CONGRESS
2D SESSION

S. 2076

To authorize appropriations to carry out the Export Administration Act of 1979 and export promotion activities.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 18 (legislative day, FEBRUARY 17), 1986

Mr. GARN (for himself and Mr. HEINZ) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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A BILL

To authorize appropriations to carry out the Export Administration Act of 1979 and export promotion activities.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 18(b) of the Export Administration Act of 1979 (50 U.S.C. 2417(b)) is amended to read as follows:

"(b) AUTHORIZATION.—There are authorized to be appropriated to the Department of Commerce to carry out the purposes of this Act—

"(1) $37,935,000 for each of the fiscal years 1987 and 1988, of which $12,746,000 shall be available for each such year only for enforcement; and

"(2) such additional amounts for each of the fiscal years 1987 and 1988 as may be necessary for increases in salary, pay, retirement, other employee benefits authorized by law, and other nondiscretionary costs.".

SEC. 2. Section 202 of the Export Administration Amendments Act of 1985 (15 U.S.C. 4052) is amended by striking out "$113,273,000 for each of the fiscal years 1985 and 1986" and inserting in lieu thereof "$123,922,000 for each of the fiscal years 1987 and 1988".

O

The CHAIRMAN. This administration has given high priority to export controls. Perfecting export controls is the only means to preserve our security while limiting defense spending. Where would our defense be today without export controls? Great progress has been made in the Commerce Department, and the administration, as a whole, should be commended for their efforts.

I look forward to hearing Secretary Baldrige, who I believe is making his first appearance before the committee today.

Senator Proxmire.

OPENING STATEMENT OF SENATOR PROXMIRE

Senator PROXMIRE. Thank you, Mr. Chairman. Secretary Baldrige.

This is the first of what I understand will henceforth be annual oral reports to our committee by the Secretary of Commerce explaining why the President is maintaining for another year foreign policy controls which would otherwise expire. This oral report is a new requirement that was imposed on the administration by changes that Congress made to the Export Administration Act [EAA] when it renewed and amended that statute in June 1985.

I have always been a strong supporter of the President's right to use export controls to restrict the export of goods and technology where necessary to further the foreign policy of the United States, or to fulfill declared international obligations, or to encourage other nations to prevent the use of their territories by international terrorists. During our consideration of the EAA, some Members wanted to take that power away from the President, in instances where the goods or technology might be available elsewhere. Congress refused to do that and the EAA provides that controls can be imposed despite foreign availability, if the purposes of the controls can still be achieved.

There were also some Members who wanted to restrict the President's right to break existing contracts when imposing foreign policy controls. Again, Congress refused to go along with that proposal and provided the President with the authority to break existing contracts when the controls are imposed, provided certain statutory requirements are met.

I think we can all realize the wisdom of providing those two authorities for the President, when we consider whether the United States would really want to be without power to stop exports to or break contracts for the export of goods to a country that supports terrorists who kill American citizens.

One fault I have with this administration is that it has not been sufficiently aggressive in using those authorities. As a consequence, Senator Roth and I introduced a bill to halt the export of military goods to Iraq and Yugoslavia, because of their role in allowing the escape of Mohammad Abbas, the PLO leader, who masterminded the *Achille Lauro* hijacking that led to the murder of Mr. Leon Klinghoffer. Mr. Abbas was on the Egyptian airliner intercepted by the United States but eluded justice because Iraq and Yugoslavia both facilitated his escape.

My bill would stop the export to Iraq of all aircraft, helicopters, or other related equipment. It would also forbid the export to

Yugoslavia of aircraft components. We will be anxious to hear why this administration has not taken any form of action against these countries who are aiding terrorists.

One other question I want to pursue with Secretary Baldrige is why this administration plans to aid a Marxist, Jonas Savimbi, in overthrowing the present Marxist Government of Angola, while at the same time it gives taxpayer moneys to that Government through Export-Import Bank loans.

In October, I wrote the Secretary of State and asked how his Department concluded it was in the national interest to make Eximbank loans to Angola's Communist regime. In its reply, the Department of State said the prohibition in section 2(b)(2) of the Eximbank charter, which forbids the Bank to engage in transactions to benefit Communist countries, did not apply to Angola, because Angola did not have a Communist government.

Well, that must surprise the Marxists who run that Government and the Soviet, East German, Czech, and Cuban military personnel who prop it up.

Senator Garn and I are sponsoring a bill to stop any more Eximbank loans to that regime, until Soviet, Cuban, and other East bloc military personnel leave that country.

We would like to hear Secretary Baldrige's views on that, on his explanation of why this administration maintains that the present Angolan Government is not Communist but still wants to furnish funds to help Dr. Savimbi overthrow it.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator D'Amato.

OPENING STATEMENT OF SENATOR D'AMATO

Senator D'AMATO. Mr. Chairman, I want to commend you for this hearing today. It is good to see Secretary Baldrige. I am going to be anxious to hear what the Secretary's response is to my good friend and colleague, Senator Proxmire. I join with him in wondering about what I perceive to be an uneven policy, in terms of how we support governments that break all of the principles that we talk about and we think are so important. It just seems to me that there is a basic inconsistency.

The Export Administration Act of 1985, Public Law 99-64, gives the President the authority to establish export controls for economic, national security, and foreign policy reasons. This law provides the necessary vehicle by which action can be taken against those nations that, among other things, fail to correct human rights violations and engage in or support international terrorism.

As Chairman of the Helsinki Commission on Human Rights, I am outraged that we continue to trade with and lend huge sums of money to nations with repressive governments. Trade embargos must be imposed on nations like the Soviet Union which trades goods produced by slave labor and ruthlessly persecutes religious minorities and dissidents.

Clearly, controlling exports to banned nations will not, in and of itself, terminate some government's inhuman treatment of their people, especially if the export control is merely symbolic because the goods can be replaced elsewhere. Some may make the charge

that this type of embargo is felt by no one except the United States businessman who deals in the controlled goods. However true this may be, the United States must not condone in any way the cruel and inhuman treatment felt by many people in other parts of the world.

We must take a stand, and we should take it here. I look forward to Secretary Baldridge's testimony.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Cranston.

OPENING STATEMENT OF SENATOR CRANSTON

Senator CRANSTON. Welcome, Secretary Baldrige, to this hearing today. I am also pleased that one of my constituents, Varian Associates Vice President Larry Hansen, is going to be testifying. I am eager to review the testimony of these witnesses on the application of U.S. export controls. I am very concerned about the impact that our export control policy has on U.S. competitiveness, but I recognize the value of such controls in supporting U.S. foreign policy and national security strategy when used in a thoughtful and an effective manner.

There is an offsetting cost associated with the indirect effects of such controls on American business that we should not and must not relax. I hope that in the course of these hearings, we can find ways to balance these off with competing objectives in a better way from the overall national point of view.

I regret that I will not be able to be present through all the testimony, but I will be reviewing it and doing my best to help this committee and the Congress respond in a constructive way.

Thank you.

The CHAIRMAN. Senator Heinz.

OPENING STATEMENT OF SENATOR HEINZ

Senator HEINZ. Thank you, Mr. Chairman.

As Secretary Baldrige knows, the enactment of the Export Administration Act amendments last year marked the end of the longest, most difficult legislative process of recent years. The question of how we, as a nation, should monitor and control the export of strategic goods and services is a controversial one, given the wide-ranging implications that these controls have for national security.

The legislation passed by Congress incorporated reasonable compromises on most of the issues, but I suppose any time compromises are made, the result is likely to create some possible ambiguity and will not be as clear as one would always wish. That makes this kind of regular oversight activity all the more important.

I am particularly interested in the foreign policy export controls, since I have long been skeptical about their use to achieve foreign policy objectives, particularly their effectiveness in achieving those objectives.

We can and have stopped exports to a country with whom we have serious differences to make a statement about our opposition to their policies. That may make us feel better, but others continue to supply the same equipment. Foreign firms replace U.S. firms as

suppliers. U.S. firms permanently lose overseas markets. The policies we oppose do not change. Frankly, without the cooperation of other countries, we gain nothing. We lose a great deal.

The case of petroleum equipment exports to the Soviet Union clearly illustrates the ineffectiveness of foreign policy controls. Even the modest change of moving oil and gas production technology from a presumption-of-denial policy to case-by-case review, gives U.S. suppliers little real headway. The U.S. petroleum equipment industry argues, accurately and effectively, that foreign policy controls on their equipment have not changed Soviet human rights or foreign policies. Further, the controls do not impede Soviet energy development, given their access to the same equipment from other foreign suppliers.

The only effects of the controls have been a loss of jobs and income to the United States, damage to U.S. firms' reputations as reliable suppliers, and a dramatic decline in U.S. sales to the Soviet Union.

I am not suggesting national security controls on highly sophisticated petroleum equipment be removed. That is not what I am suggesting. I am questioning the effectiveness of foreign policy controls in the face of foreign availability of the same equipment.

The administration has also failed to develop adequate means of determining foreign availability in the case of national security controls. The Commerce Department's recent regulations deny the opportunity of a foreign availability assessment if a license is approved, thus preventing exporters from securing decontrol of categories of goods. I recognize the resource problem that Commerce has, but in my judgment, this is clearly contrary to the letter and spirit of the 1985 amendments.

Another serious concern relates to contract sanctity. As I have said in the past, the American export community's credibility has been severely damaged by Presidential decisions to impose foreign policy export controls and abrogate export contracts. This is why I successfully pressed for tough contract sanctity language that included foreign availability guidelines in the 1985 legislation. These safeguards, however, have been circumvented through the use of the International Economic Emergency Powers Act in cases that are, by the administration's own admission, not national emergencies.

If the procedures we so laboriously negotiated last year are to work effectively, and if exporters' credibility is to be maintained, it is imperative that such emergency powers be used rarely and with great caution.

Finally, it is critical that the Commerce Department have sufficient resources to carry out congressional objectives in both export administration and export promotion activities.

I think, Mr. Chairman, the committee will want to hear the Department's views on the adequacy of the proposed budget to manage its increased responsibilities.

Let me say, finally, that it is a pleasure to have Secretary Baldrige here. I welcome the chance to hear his testimony. He has done a great deal to improve our export control structure and to promote exports, and I know his intentions are genuinely consistent with the wishes of this committee. I join in the welcome.

The CHAIRMAN. Thank you, Senator. Senator Mattingly.

OPENING STATEMENT OF SENATOR MATTINGLY

Senator MATTINGLY. Mr. Chairman, thank you. I welcome the Secretary today.

Secretary Baldrige I hope you do address in your remarks, the impact that the Export Administration Act has had on the ability of this country to open up markets. We know what we intended the act to do, but it hasn't been too effective in helping U.S. producers who want to export. Contract sanctity is a provision that needs careful attention.

I would like to welcome the distinguished witnesses who will appear before the committee today. I think all of my colleagues would agree with me when I say that your testimony is eagerly awaited. Mr. Chairman, in reviewing the agenda for today's hearing, it quickly became apparent that we have a lot of ground to cover so I will be brief in my opening remarks.

I am proud of the positive role that this committee played in crafting a renewal of the Export Administration Act last year. I have taken a special interest in the promotion of U.S. exports, particularly those of small- and medium-sized businesses. I have seen the inherent difficulty in developing an aggressive export policy while protecting the technological lead that ensures our national security. Somewhere, in a gray area of this inherent conflict, falls the issue of foreign policy controls. Our recently revised export control laws offer a more clear and pragmatic approach to this issue than was thought possible 2 years ago. This has done much for the reputation of the United States as a reliable source of goods and services.

Yet the balance can be easily upset—no matter how necessary, foreign policy controls can have important political and economic repercussions. I, and I am sure others of my colleagues, have had personal experiences with constituents caught between a conscientious desire to export and the realities of foreign policy performance. This is why I know I am not alone in wanting to be reassured that, in striving for our foreign policy goals, this country does not forget to realistically consider the economic impact of the means we use to reach those goals. We must be careful to avoid international policies that oftentimes directly conflict with each other.

Mr. Chairman, I am, in addition, very interested in the success of the Commerce Department in implementing last year's EAA amendments pertaining to expedited licensing and the Department's interaction with the Department of Defense in export license review. Thank you.

The CHAIRMAN. Senator Dixon.

STATEMENT OF SENATOR ALAN DIXON

Senator DIXON. Mr. Chairman, I am pleased to be here this morning as the Banking Committee receives the First Annual Report on Foreign Policy Controls from the Secretary of Commerce, and take testimony on export administration and promotion budget issues.

I believe it is important to conduct an annual review of export control issues. Export control policy plays a major role in determining the kind of export success U.S. businesses will enjoy. Export control policy should not be reviewed only in times of crisis. These issues deserve and require regular, detailed attention from this committee.

I look foward to testimony by this morning's witnesses on issues such as why the International Emergency Economic Powers Act rather than the Export Administration Act was used as the basis for the controls issued on South Africa. I also look forward to hearing from Secretary Baldrige on the administration's objectives in renewing controls on the export of oil and gas exploration and production equipment to the Soviet Union.

I have long felt, particularly in the foreign policy controls area, that if controls are intended to have any practical effect on the target country, we must make greater efforts to involve our allies before controls are imposed, rather than acting unilaterally and attempting to get cooperation afterward. The international marketplace is extremely competitive. Most of what can be purchased here can also be purchased from our major industrial competitors. The net result of unilateral action, therefore is like trying to protect yourself with a gun loaded with blanks when everyone knows there are only blanks in the chambers. Frankly, it is probably worse than that because even though controls are often blanks as far as the target is concerned, they do have the ability to blow up in our face and seriously damage major U.S. exporters.

I do not argue that effectiveness ought to be the sole criteria considered in export controls decisions; there are occasions when it is important to act for symbolic reasons. I believe it is important to balance symbolic and economic considerations carefully, however, before imposing controls, and that the long-term consequences of controls should be analyzed in detail so that decisionmakers have a proper appreciation of the costs and benefits of any decision to impose export controls.

[The prepared statement of Senator Denton follows:]

STATEMENT OF SENATOR JEREMIAH DENTON

Mr. Chairman; I thank you for giving Senate Concurrent Resolution 94 expedited consideration, thereby recognizing the urgent need to address the worldwide problem on terrorism. As you know, Senate Concurrent Resolution 94, which I introduced on December 13, 1985, expresses the sense of the Congress that the Chairman should declare a state of national emergency with respect to terrorist acts committed against nationals of the United States and exercise the authority granted him by the International Emergency Economic Powers Act.

Mr. Chairman, the pattern that emerges from studying the testimony obtained, in more than 60 hearings before the Judiciary Subcommittee on Security and Terrorism, which I chair, and in joint hearings with the Senate Foreign Relations Committee, is that terrorism is the most widely practiced form of modern warfare. It is both a major force and a major trend in international affairs. It has the strategic advantages of low risk, low cost, and alternatives of total deniability or self-accreditation. The blood is only on the hands of the fanatics, the surrogates in that kind of warfare.

The direct measured costs of terrorism to the United States are that since 1980, terrorist incidents overseas have taken over 300 American lives, and more than 400 Americans have suffered injuries. More than 100 Americans are acknowledged to have been kidnaped or taken hostage. I want to emphasize that many more are victims, but the ransoms are often paid quietly by companies seeking to avoid publicity and who write off the ransoms as a business expense.

Terrorism also costs the United States a very high, and still uncounted sacrifice in strategies and economic terms: loss of access to raw materials, to trade advantages, sometimes to any trade at all. The synergism of connection between drugs and terrorism costs us dearly in social, economic, and security terms.

In responding to terrorism, this administration and others before it have often promised to take swift, firm action. We have said we will pay no ransom, release no prisoners, nor yield in any way to terrorists demands. We have espoused a policy of no concessions.

Yet those statements of strong anti-terrorist policy did not stop the attacks on our Embassies in Lebanon, or the October 23, 1983, suicide bombing attack of the Marine compound at Beirut Airport with the loss of 241 American lives. It did not stop the bombing of U.S. installations in Kuwait, and the continuing murders of U.S. military and civilian personnel abroad—including four Marines and two American civilians plus seven others in El Salvador—the murder of Robert Dean Stethem aboard TWA flight 847 and most recently the murder of Leon Klinghoffer aboard the *Achille Lauro*.

Mr. Chairman, we have come to a point in our history that requires that we establish both a foreign and domestic policy for dealing with the obvious threat. This country must take the offensive in the flight against terrorism. It was in that vein, that I introduced Senate Concurrent Resolution 94.

The resolution expresses the sense of Congress that the chairman should declare a state of national emergency with respect to terrorist acts committed against nationals of the United States. Specifically, the resolution states:

That it is the sense of the Congress that the chairman should—

(1) Declare a national emergency with respect to acts of terrorism directed against the nationals, property, and interests of the United States;

(2) Investigate and determine the nature and extent of those assets and holdings in the United States of the groups, organizations, or fractions responsible for committing acts of terrorism; and

(3) Prohibit transactions involving such assets and holdings in accordance with, and to the extent specified by, the authority granted by section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1702).

The purpose of the resolution is simple: If this country can't apprehend the invidiuals responsible for terrorist acts, we can at least enjoin the terrorists from earning money in this country.

Mr. Chairman, I believe that this resolution will represent a necessary step toward winning the fight against terrorism. I urge the members of the committee to support this measure.

Thank you Mr. Chairman, for your courtesy in allowing me to testify today.

The CHAIRMAN. Senator Armstrong.

Senator ARMSTRONG. Thank you, Mr. Chairman. No statement.

The CHAIRMAN. Senator Gorton.

Senator GORTON. No statement, Mr. Chairman.

The CHAIRMAN. Mr. Secretary, we are happy to have you before us today. We welcome you.

STATEMENT OF MALCOLM BALDRIGE, SECRETARY OF COMMERCE OF THE UNITED STATES

Secretary BALDRIGE. Thank you, Mr. Chairman.

In making the decision to extend the Export Administration Act [EAA] for the year, we carefully examined the criteria for extending the export controls which were expanded by the July 1985 amendments to the EAA. We determined to what extent these control programs would contribute to the foreign policy of the United States.

My Department takes very seriously the act's expanded criteria. We carry out the Foreign Policy Control Program, as well as the National Security and Short Supply Control Program.

The administration is submitting to the Congress a request to authorize appropriations of over $35 million, $35,900,000 for fiscal

1987. Of this total, about $12.7 million is for enforcement and $23.1 million for other export control activities.

In addition, the administration is requesting appropriation authorization of $123.9 million for export promotion activities under title II of the EAA of 1979, as amended.

I have also been asked to discuss my recent trip to the Soviet Union and prospects for United States-Soviet trade in 1986. After this discussion, I will be pleased to answer your question.

FOREIGN POLICY CONTROLS

First, foreign policy controls. In the context of our overall export control regime, foreign policy controls are relatively few in number, but they have been and are the subject of continuing controversy. Unlike national security controls, foreign policy controls do not have a single clear-cut purpose. The purpose may range from the specific, such as controlling the export of a certain chemical to a particular region to a much broader context, such as completely disassociating the United States from a particular country, as in the case of Libya.

It also should be understood that foreign policy controls are very often only part of an overall U.S. policy toward a country or region.

The purpose of foreign policy controls. In fact, there are several such as denying targeted governments access to specific U.S.-origin commodities. Foreign policy controls serve an important purpose and have one or more effects: They might impose hardships on the economy of the target country; they might distance the United States from and deny access to U.S.-origin goods that could contribute to unacceptable behavior on the part of a foreign regime; and they could deny access of certain U.S. items that would adversely affect regional stablility or provide a flexible tool to respond to changes in the target country's behavior.

Each of the foreign policy export control programs has different purposes.

Human rights, for example, controls U.S.-origin police equipment to ensure that governments respect internationally recognized human rights.

The antiterrorism foreign policy controls items such as aircraft, avionics, and helicopters of those countries which have repeatedly provided support for acts of international terrorism.

The regional stability foreign policy controls exports of military vehicles and items used in the manufacture of military equipment that could contribute to the military capabilities of certain countries in the region of conflict and tension.

Additionally, foreign policy controls are in effect for South Africa, Libya, Cuba, North Korea, Vietnam, and Cambodia; certain chemicals to Iran and Iraq; technical data and designated equipment for the Kama River, or ZIL, truck plants; equipment and certain related technical data for the exploration and production of Soviet oil and gas.

In accordance with the Nuclear Nonproliferation Act of 1978, foreign policy controls are also in effect for nuclear nonproliferation purposes.

In addition to foreign policy controls administered under the Export Administration Act, exports to South Africa and Libya are also administered under the authority of the International Emergency Economic Powers Act.

EFFECTIVENESS OF FOREIGN POLICY CONTROLS

The effectiveness of each foreign policy control depends on several factors, including the degree to which the control is focused on a specific region or specific commodity that creates cooperation among allies, the degree of cooperation among allies, and the extent to which foreign sources of controlled items are available.

The EAA's new criteria charges the Department with making critical assessments of the purpose of each foreign policy control and the likelihood of achieving those purposes. The weight assigned to individual criteria will vary depending on the control itself.

Such considerations and assessments are essential to determine the effectiveness of the controls.

Largely, the adjustment we made to the Soviet oil and gas controls, specifically to review on a case-by-case basis applications for exports of technical data for oil and gas exploration or production, was in direct response to such an assessment and was aided by industry comments on the economic impact of these particular controls.

While foreign availability is an important component in assessing foreign policy controls, there are circumstances in which it is not an appropriate factor; the human rights or antiterrorism areas, for example. The United States does not want U.S.-origin commodities to be used in such violations regardless of extensive foreign sources.

The July 1985 amendments to the EAA exempting such controls from foreign availability consideration reflects congressional agreement on that issue.

Because multilateral controls are more effective, the U.S. Government attempts to gain support from our allies where unilateral controls exist.

Our efforts to restrict the sale to Iran and Iraq of certain chemicals were successful because of the support of certain of our allies in this area, and we have obtained the cooperation of our allies in controlling the supply of arms and military equipment to regions of instability and tension.

In other areas we have not been able to get their support, our allies' support, for our foreign policy controls.

The effectiveness of foreign policy controls, is but one component that must be weighed with other equally important factors, such as the potential adverse impact of such controls.

As in the past, the extraterritorial aspects of the application of foreign policy controls can cause problems with our allies and our other friends, and in addition to the impact these controls can have on our relations, they can also have an identifiable and sometimes adverse impact on U.S. industry.

ECONOMIC IMPACT OF CONTROLS

As part of the annual review of these controls, we consider the economic impact on industry. This is a complex task. These costs are not only hard to quantify but difficult to identify.

Because of the hidden costs, we rely heavily on public comments which, though anecdotal, provide evidence of further costs, such as the impact on U.S. companies' reputations as reliable suppliers, licensing delays, loss of markets, including loss of research and development for the future.

These complex but necessary assessments are vitally important because the international reputation and profitability of U.S. industry is critical to the economic welfare of the Nation. For these reasons alone, it is important to understand the impact of these controls.

Hard decisions. In some areas foreign policy controls are only one of a limited number of nonmilitary options available to the President by which he can express opposition to actions of other governments, such as the repeated support of terrorist activities or violations of human rights, and, recognizing the importance of foreign policy control as such an option, we must still carefully weigh the costs of controls against the foreign policy benefits, particularly in this time of mounting U.S. trade deficits.

Further, we must enlist the cooperation of our allies to strengthen and improve the effectiveness of such controls. In doing this, we will be forced to make difficult decisions.

The act's expanded criteria provide a basis for making these decisions by focusing on the controls' likelihood of achieving their intended purpose in light of such factors as cooperation with other countries, foreign availability, and the economic impact on U.S. industry.

Mr. Chairman, you asked that I also report today on my trip to the Soviet Union in December.

I went to Moscow at the invitation of the private sector on this trip, the U.S.-U.S.S.R. Trade and Economic Council, to address their ninth annual meeting.

My purpose in going was to show United States Government support for the expansion of peaceful trade between those two countries and to encourage American business representatives and Soviet trade officials in their efforts to develop new business.

Now, by peaceful trade we mean trade in goods and services not prohibited for national security reasons and consistent with our existing laws and policies. Strategic goods and technology are proscribed by U.S. export controls and the multilateral controls which the United States maintains along with its allies.

So trade in strategic goods and technology was not a topic on the table for discussion.

The United States can benefit from increased peaceful trade with the Soviet Union through more exports and jobs. In fact, a wide range of goods can be exported to the U.S.S.R. under our regulations.

About 450 United States business representatives and an equal number of Soviet trade and industry officials attended the Trade and Economic Council meeting in Moscow. That large turnout indi-

cates the high level of interest on both sides in developing new business.

INCREASED TRADE WITH U.S.S.R.

I told the group that the U.S. Government believes that significant trade gains are possible within present policies and should be encouraged. I also announced that the Department of Commerce was beginning an official trade promotion program in the Soviet Union in January.

This trade promotion program will include single- and multiple-company exhibits at the Commercial Office, sales missions, and participation in selected Soviet trade fairs, beginning with the Soviet food industry exhibit in September of this year. We will be adding a second officer at our U.S. Commercial Office this year in Moscow to provide assistance to American business representatives and to carry out this program.

During the visit, I met for the second time with General Secretary Gorbachev, who told me that he and President Reagan had made a new beginning in the United States-Soviet relationship. Both the General Secretary and I agreed—and I might add the President agreed—that an expanded trade relationship is one way we can build on the new start from Geneva.

Increased trade cannot solve all the problems in our relationship. To a great extent progress in trade must move in parallel with improvement in other aspects of relations.

As I told the General Secretary, there can be a substantial increase in nonstrategic trade between our two countries as part of an overall improvement in that relationship.

I also met with the new Soviet Foreign Trade Minister, Boris Aristov, and confirmed understandings reached with his predecessor at the joint U.S.-U.S.S.R. Commercial Commission last May.

At that meeting, the Foreign Trade Minister had agreed to send an unpredecented letter to Soviet foreign trade organizations, ensuring that they would provide bid invitations to all interested American companies, provide access to appropriate Soviet officials, and consider American company proposals on their economic merits.

United States companies have reported a sharp change since that time. They are receiving bid inquiries, and they are being invited to come up with new proposals, and Soviet orders, for example, for machinery and equipment from United States firms, are running significantly above the previous level. They totaled about $240 million in 1985 compared to $70 million in 1984. So the number of new business possibilities continues to grow.

On our side, we have proposed legislation removing the 34-year-old embargo on imports of seven types of Soviet furskins.

As I told the Trade Subcommittee of the House Ways and Means Committee, President Reagan considers this legislation an important part of his effort to build a more constructive relationship with the Soviet Union. Secretary Shultz and I concur.

The bill is in the obvious economic interest of the United States. The steps undertaken by the Soviets will lead to a significant increase in United States exports. At the same time, removal of the

embargo on furskins should have little or no effect on the U.S. fur industry.

So I hope the members of the committee will support the bill.

We expect our nonagricultural exports to the Soviet Union to increase to about $800 million this year compared to about $600 million in 1985 and about $500 million in 1984.

I think total exports may decline somewhat as Soviet grain purchases decline. Our imports from the Soviet Union will probably total about $500 million, as compared to $400 million last year.

Mr. Chairman, that concludes my testimony. I will be pleased to answer any questions.

[The complete prepared statement and attachments follow:]

STATEMENT OF
MALCOLM BALDRIGE
SECRETARY OF COMMERCE
BEFORE THE
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

UNITED STATES SENATE
FEBRUARY 19, 1986

I. Introduction

I would like to thank the members of the Committee for the opportunity to discuss the purpose, effectiveness and economic impact of the foreign policy export controls. On January 17, 1986, we extended for one year, beginning January 21, 1986, those foreign policy controls imposed under the Export Administration Act (EAA) and in effect at that time. This decision was made on the recommendation of the Secretary of State with my concurrence.

In making this decision, we carefully considered the criteria for extending export controls which were expanded by the July 1985 amendments to the EAA. We determined that the extension of these control programs would contribute to the foreign policy of the United States. My Department takes very seriously the Act's expanded criteria for extending, expanding and imposing foreign policy controls, as demonstrated by the extensive analyses undertaken in preparing this year's report on extending the foreign policy controls.

To carry out the foreign policy control program, as well as national security and short supply control programs, the Administration is submitting to the Congress a request to authorize appropriations of $35,935,000 for fiscal year 1987. Of this total, approximately $12.7 million is for Enforcement and $23.1 million is for other export control activities. In addition, the Administration is requesting appropriation authorization of $129,922,000 for export promotion activities under Title II of the EAA of 1979, as amended.

I have also been asked to discuss my recent trip to the Soviet Union and prospects for U.S.-Soviet trade in 1986. After my discussion, I will be pleased to answer your questions.

II. Foreign Policy Controls: Context

In the context of our overall export control regime, foreign policy controls are relatively few in number; but, they have been, and are, the subject of continuing controversy. Unlike national security controls, foreign policy controls do not have a single clear cut purpose. Their purpose may range from the specific, such as controlling the export of a certain chemical to a particular region, to a broader context, such as completely disassociating the U.S. from a particular country as in the case of Libya. It must also be understood that a foreign policy control is often only part of an overall U.S. policy toward a country or region.

III. Foreign Policy Controls: Purpose

By denying targeted governments access to specific U.S.-origin commodities, foreign policy controls serve an important purpose and have one or more effects. They might:

- impose hardships on the economy of the target country or countries;
- distance the United States from, and deny access to U.S.-origin goods that could contribute to, unacceptable behavior on the part of a foreign regime;
- deny access of certain U.S. items that would adversely affect regional stability; or
- provide a flexible tool to respond to changes in the target country's behavior.

Within the overall context of foreign policy controls, each specific program has different purposes.

Human Rights: controls U.S.-origin police equipment to ensure that governments respect internationally recognized human rights.

Anti-terrorism: controls items such as aircraft, avionics, and helicopters to those countries which have repeatedly provided support for acts of international terrorism.

Regional Stability: controls exports of military vehicles and items used in the manufacture of military equipment that could contribute to the military capabilities of certain countries in regions of conflict and tension.

Other Controls: Additionally, foreign policy controls are in effect for:

- o South Africa,
- o Libya,
- o Cuba, North Korea, Vietnam, and Cambodia,
- o certain chemicals for Iran and Iraq;
- o technical data and designated equipment for the Kama River or ZIL truck plants;
- o equipment and certain related technical data for the exploration or production of Soviet oil and gas.

In accordance with the Nuclear Non-proliferation Act of 1978, foreign policy controls are also in effect for nuclear non-proliferation purposes.

In addition to foreign policy controls administered under the Export Administration Act, exports to South Africa and Libya are also administered under the authority of the International Emergency Economic Powers Act (IEEPA).

IV. Foreign Policy Controls: Effectiveness

The effectiveness of each foreign policy control depends on several factors, including:

- o the degree to which the control is focused on a specific region or specific commodity,
- o the degree of cooperation among allies, and
- o the extent to which foreign sources of controlled items are available.

The EAA's new criteria charge the Department with making critical assessments of the purpose of each foreign policy control program and its likelihood of achieving those purposes. The weight assigned individual criteria will vary depending on the control itself. Such considerations and assessments are essential to determine the effectiveness of the controls.

Largely, the adjustment we made to the Soviet oil and gas controls-- specifically, to review on a case-by-case basis applications for exports of technical data for oil and gas exploration or production-- was in direct response to such an assessment and was aided by industry comments on the economic impact of these particular controls.

Furthermore, the Department used its existing capabilities to meet the EAA's more stringent criteria, particularly to determine foreign sources.

While foreign availability is an important component in assessing foreign policy controls, there are circumstances in which it is not an appropriate factor. In the human rights or anti-terrorism areas, for example, the United States does not want U.S.-origin commodities to be used in such violations, regardless of extensive foreign sources. The July 1985 amendments to the EAA exempting such controls from foreign availability consideration reflect Congressional agreement on this issue.

Because multilateral controls are obviously more effective, the U.S. government attempts to gain support from our allies where unilateral controls exist. Our efforts to restrict the sale to Iran and Iraq of certain chemicals useful in the manufacture of chemical weapons were successful because of the support of certain of our allies in this area. Similarly, we have obtained the cooperation of our allies in controlling the supply of arms and military equipment to regions of instability and tension. For those foreign policy controls that have only limited support from our allies and other friends, we will redouble our efforts to gain their support.

V. Foreign Policy Controls: Impact

The effectiveness of foreign policy controls is but one component that must be weighed with other equally important factors, such as the potential adverse impact of such controls. As in the past, the extraterritorial aspects of the application of foreign policy controls can cause problems with our allies and other friends. In addition to the impact these controls can have on our relations with our allies and friends, they also can have an identifiable and, sometimes, adverse impact on U.S. industry.

As part of the annual review of foreign policy controls, we considered the economic impact of such controls on industry. This is a complex task because such costs are not only hard to quantify, but also difficult to identify. Because of these hidden costs, we rely heavily on public comments which, though anecdotal, provide evidence of further costs such as:

- o the impact on U.S. companies' reputation as reliable suppliers, and
- o licensing delays resulting from our need to verify suitability of new, previously unkown, foreign consignees.

These complex, but necessary assessments, are vitally important because the international reputation of U.S. industry is critical to the economic welfare of the nation. For this reason alone, it is important to understand the impact of these controls.

VI. Foreign Policy Controls: Hard Decisions

Foreign policy controls are only one of a limited number of non-military options available to the President by which he can express opposition to actions of other governments, such as the repeated support of terrorist activities or violations of human rights.

Recognizing the importance of foreign policy control as such an option, we still must carefully weigh the costs of controls against the foreign policy benefits, particularly in this time of mounting U.S. trade deficits. Further, this suggests that we must enlist the cooperation of our allies to strengthen and improve the effectiveness of such controls.

In doing this, we will be forced to make difficult decisions. The Act's expanded criteria provide a basis for making these decisions by focusing on the controls' likelihood of achieving their intended purpose in light of such factors as cooperation with other countries, foreign availability and the economic impact on U.S. industry.

VII. Trip to the Soviet Union

Mr. Chairman, you asked that I also report today on my trip to the Soviet Union in December.

I went to Moscow at the invitation of the private sector U.S.-U.S.S.R. Trade and Economic Council to address their Ninth Annual Meeting, December 9-11. My purpose in going was to show U.S. government support for the expansion of peaceful trade between the United States and the Soviet Union and to encourage American business representatives and Soviet trade officials in their efforts to develop new business.

By peaceful trade we mean trade in goods and services not prohibited for national security reasons and consistent with our existing laws and policies. Strategic goods and technology are proscribed by U.S. export controls and the multilateral controls which the United States maintains along with its allies. Trade in strategic goods and technology was not a topic on the table for discussion.

The United States can benefit from increased peaceful trade with the Soviet Union through more exports and jobs. In fact, a wide range of goods can be exported to the U.S.S.R. under our regulations.

About 450 U.S. business representatives and an equal number of Soviet trade and industry officials attended the Trade and Economic Council meeting in Moscow. The large turnout indicates the high level of interest on both sides in developing new business.

I told the group that the U.S. government believes that significant trade gains are possible within present policies and should be encouraged. I also announced that the Department of Commerce was beginning an official trade promotion program in the Soviet Union in January with a single-company exhibit at the U.S. commerial office in Moscow.

This trade promotion program will include single and multiple company exhibits at the commercial office, sales missions, and participation in selected Soviet trade fairs, beginning with the Soviet food industry exhibit in September 1986. To carry out this program and provide assistance to American business representatives visiting Moscow, we will be adding a second officer at our U.S. Commercial Office this year.

During the visit, I met for the second time with General Secretary Gorbachev, who told me that he and President Reagan had made a new beginning in the U.S.-Soviet relationship. Both the General Secretary and I agreed that an expanded trade relationship is one way we can build on the new start from Geneva.

Increased trade cannot solve all the problems in the U.S.-Soviet relationship; to a great extent progress in trade must move in parallel with improvement in other aspects of relations. As I told the General Secretary, there can be substantial increase in non-strategic trade between our two countries as part of an overall improvement in that relationship.

I also had the opportunity to meet with the new Soviet Minister of Foreign Trade, Boris Aristov, and confirm understandings reached with his predecessor at the meeting of the Joint U.S.-U.S.S.R. Commercial Commission last May. At that meeting the Foreign Trade Minister had agreed to send an unprecedented letter to Soviet foreign trade organizations ensuring that they would provide bid invitations to all interested American companies, provide access to appropriate Soviet officials, and consider American company proposals on their economic merits.

U.S. companies have reported a sharp change since that time. They are receiving bid inquiries. And they are being invited to come up with new proposals.

Most significantly, Soviet orders for machinery and equipment from U.S. firms are running significantly above the previous level. They totalled about $240 million in 1985, compared to only about $70 million in 1984. The number of new business possibilities under discussion between U.S. firms and Soviet trade organizations continues to grow.

In consideration of Soviet steps to open their market to U.S. firms, we have proposed legislation removing a 34-year-old embargo on imports of seven types of Soviet furskins. As I told the Trade Subcommittee of the House Ways and Means Committee two weeks ago, President Reagan considers this legislation an important part of his effort to build a more constructive relationship with the Soviet Union. Secretary Shultz and I strongly concur.

The bill is in the economic interest of the United States. The steps undertaken by the Soviets will lead to a significant increase in U.S. exports. At the same time, removal of the embargo, according to our analysis, should have little or no effect on the U.S. fur industry. I hope the members of the Committee will support the bill.

We expect our non-agricultural exports to the Soviet Union to increase to about $800 million this year, compared to about $600 million in 1985 and about $500 million in 1984. Total exports may decline somewhat, from about $2.4 billion in 1985 to about $2.3 million this year, as Soviet grain purchases decline. Our imports from the Soviet Union will probably total about $500 million, as compared to $400 million last year.

That concludes my testimony. I will be pleased to answer any questions the Committee may have.

THE SECRETARY OF COMMERCE
Washington, D.C. 20230

JAN 17 1986

Honorable Thomas P. O'Neill, Jr.
Speaker of the House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

In accordance with authority contained in section 6 of the Export Administration Act of 1979, as amended (hereinafter "the Act"), as delegated to me under Executive Order No. 12214 of May 2, 1980, I hereby extend for the period January 21, 1986, through January 20, 1987, export controls maintained for foreign policy purposes as specified in Enclosure I. This action is taken upon recommendation of the Secretary of State with my concurrence that these controls are necessary to further significantly the foreign policy of the United States or to fulfill its declared international obligations.

These controls are the same as those extended for the period January 21, 1985, through January 20, 1986, except for controls on South Africa. Because new controls on South Africa are maintained pursuant to the requirements of section 6 (n) of the Act and Executive Order No. 12532, they do not require extension at this time. The controls on Libya are included in the extension and are consistent with Executive Order No. 12543.

In accordance with section 6 (f) of the Act, I am also submitting, as Enclosure 2, a full report specifying the purpose, effectiveness and impact of the controls to be extended.

Meaningful opportunity was provided for public comment on the scope of foreign policy controls. A summary of public comments received is attached in Enclosure 3. The countries and the goods and technologies subject to foreign policy export controls are identified in Export Administration Regulations published in the Federal Register.

Additionally, Congress is notified that controls administered in accordance with procedures established pursuant to section 309 (c) of the Nuclear Non-Proliferation Act of 1978 continue in effect.

Sincerely,

Malcolm Baldrige

Secretary of Commerce

Enclosures

ENCLOSURE 1

Export Controls for Foreign Policy[1/]
Purposes Extended for the Period
January 21, 1986, through January 20, 1987

I. Human Rights (Section 376.14)[2/]

A. A validated license is required for foreign policy purposes for export to all countries except members of the North Atlantic Treaty Organization, Japan, Australia and New Zealand of crime control and detection instruments, equipment and related technical data.

B. Applications for validated export licenses will generally be considered favorably on a case-by-case basis unless there is evidence that the government of the importing country may have violated internationally recognized human rights and that the judicious use of export controls would help to deter such violations or to distance the United States from such violations.

1/ Certain goods and data described in this report, whether or not subject to foreign policy controls, may require a validated license for certain destinations for national security purposes.

2/ Citations following each of the foreign policy control programs refer to those sections of the Export Administration Regulations, 15 CFR (Parts 368-399)(1985), in which the control program is described in detail.

II: Anti-Terrorism (Section 385.4 (d))

The Secretary of State has designated Syria, Iran, the People's Democratic Republic of Yemen (PDR Yemen), Libya [1], and Cuba [2] as countries that have repeatedly provided support for acts of international terrorism. The Secretary of State reviews these designations continually, and makes changes whenever he concludes that a country's conduct warrants action.

A. A validated license is required for foreign policy purposes for the export to Syria and the People's Democratic Republic of Yemen of:

1. aircraft valued at $3 million each or more and helicopters over 10,000 pounds empty weight, except civil aircraft for use by regularly-scheduled airlines based in Syria or in the People's Democratic Republic of Yemen for which assurances against military use have been submitted to the Department of Commerce; and

2. other commodities and technical data subject to control for national security purposes if the proposed export is valued at $7 million or more and is destined for a military end-user or a military end-use.

B. For Syria and the People's Democratic Republic of Yemen, applications for validated export licenses will:

1. generally be considered favorably on a case-by-case basis for aircraft and helicopters for civil use if issuance of the licenses would be consistent with the policies set forth in sections 3(4), 3(8) and 3(10) of the Export Administration Act of 1979, as amended (hereinafter "the Act"); and

2. be reviewed for items destined for a military end-user or end-use from the standpoints of whether they would make a significant contribution to the military potential of the importing country and whether denial or approval would encourage that country to take steps to prevent the use of its territory or resources to support international terrorism.

[1] See Enclosure I, Section III for controls imposed on Libya.

[2] See Enclosure I, Section VI for controls imposed on Cuba.

C. A validated license is required for foreign policy purposes for the export to Iran of:

1. aircraft, helicopters, avionics, and those aircraft parts subject to national security controls;

2. marine outboard engines with a horsepower of 45 or more; and

3. other commodities and technical data subject to control for national security purposes if destined for a military end-user or a military end-use.

D. For Iran, applications for validated licenses will generally be denied, except on a case-by-case basis for:

1. exports pertaining to a contractual arrangement in effect prior to January 23, 1984 or September 28, 1984, depending on the commodity involved;

2. the reexport of goods or technology already outside the U.S. on January 23, 1984 or September 28, 1984, or the export of foreign products incorporating such items as components; and

3. the use of U.S.-origin components incorporated into foreign-origin equipment and constituting twenty percent or less by value of that equipment.

E. Pursuant to Section 6(j) of the Act, at least thirty days before any license for items subject to these controls valued at $7 million or more is approved for export, the appropriate Congressional committees will be notified.

III. Libya (Section 385.7)-

Described below are the foreign policy controls maintained by the Department of Commerce under the Export Administration Regulations. On January 7, and 8, 1986, the President invoked his authority under the International Emergency Economic Powers Act and other authorities to impose sanctions against Libya. Among the sanctions imposed were restictions on exports from the United States to Libya. These are implemented by the Libyan Sanctions Regulations issued by the Department of the Treasury (31 CFR Part 550). While the restrictions on exports to Libya under the Export Administration Regulations remain in effect, the Department of Commerce issued regulations concerning Libya export controls to avoid duplicate licensing procedures. These regulations, effective February 1, 1986, permit exporters to make exports from the United States to Libya under licenses issued by the Department of Treasury. Reexport controls maintained under the Export Administration Regulations remain in effect. The discussion that follows in this report is limited to the controls maintained under the Export Administration Regulations.

A. A validated license is required for foreign policy purposes for export to Libya of all U.S.-origin goods or technical data and certain foreign products derived from strategically controlled U.S.-origin technical data, except:

   1. medicine and medical supplies;

   2. food and agricultural commodities;

   3. items permitted under certain special purpose general licenses; and

   4. the export to Libya from other countries of:

      a. the foreign nonstrategic product of U.S.-origin technical data; or

      b. the foreign strategic product of U.S.-origin technical data exported from the U.S. before March 12, 1982.

B. Applications for validated export licenses will be reviewed on a case-by-case basis and will generally be denied for:

   1. off-highway wheel tractors of carriage capacity of ten tons or more except in reasonable quantities for civil use;

   2. aircraft (including helicopters), aircraft parts, and avionics, whether or not subject to national security controls, that would constitute a high risk of increasing Libyan capabilities to carry military cargo or troops or to conduct reconnaissance, observation, or other military missions if diverted from civil use;

   3. goods and technical data destined for the Ras Lanuf Petrochemical Processing Complex, except on a case-by-case basis for:

      a. exports pertaining to a contractual arrangement in effect prior to December 20, 1983;

      b. the reexport of goods or technology already outside the United States on December 20, 1983, or the export of foreign products incorporating such items as components;

      c. the use of U.S.-origin components incorporated in foreign-origin equipment and constituting twenty percent or less by value of that equipment; and

   4. other commodities controlled for national security purposes and related technical data, and oil and gas equipment and related technical data not readily available from non-U.S. sources, except, on a case-by-case basis:

      a. where failure to obtain an export license would not excuse performance of a contract in effect prior to March 12, 1982;

      b. the reexport of goods or technology already outside the United States on March 12, 1982, or the export of foreign products incorporating such items as components;

      c. the use of U.S.-origin components incorporated in foreign-origin equipment and constituting twenty percent or less by value of that equipment; and

      d. other unusual situations.

C. In cases where commodities and technical data are subject to more than one type of control (e.g., national security, anti-terrorism, regional stability, nuclear non-proliferation), the most restrictive standard will be applied.

IV. Chemicals with use in the manufacture of chemical weapons (Iraq and Iran only)

A. A validated license is required for foreign policy purposes for the export to Iran and Iraq of potassium fluoride, dimethyl methylphosphonate, dimethylamine, dimethylamine hydrochloride, ethylene chlorohydrin (chloroethanol), methyl phosphonyl difluoride, phosphorous oxychloride, and thiodiglycol.

B. Applications for validated licenses will be denied where there is reason to believe that these chemicals will be used in producing chemical weapons or will otherwise be devoted to chemical warfare purposes.

V. Regional Stability (Section 376.16)

A. A validated license is required for foreign policy purposes for export to all destinations except NATO countries, Japan, Australia, and New Zealand of equipment to manufacture arms, ammunition, military explosives and propellants; specially designed military vehicles; and components for ammunition.

B. Applications for validated export licenses will generally be considered favorably on a case-by-case basis unless their export would contribute significantly to the destabilization of the region to which the commodities are destined.

VI. North Korea, Vietnam, Cambodia and Cuba (Section 385.7)

A. A validated license is required for foreign policy purposes for export to North Korea, Vietnam, Cambodia, or Cuba of all commodities and technical data except [1]:

1. technical data generally available to the public and educational materials;

2. personal baggage, crew baggage, vessels and certain aircraft on temporary sojourn, ship stores and plane stores;

3. foreign-origin items in transit through the United States;

4. shipments for U.S. Government personnel and agencies; and

5. gift parcels not exceeding $200 of commodities such as food, clothing (non-military), and medicines.

B. Applications for validated licenses will generally be denied except on a case-by-case basis for:

1. non-commercial exports to meet emergency needs; and

2. reexports to Cuba of U.S.-origin parts, components and materials that are insubstantial portions of nonstrategic foreign-made products.

[1] Pursuant to section 6(g) of the Act, foreign policy controls are not authorized "on donations of goods ... intended to meet basic human needs". The Department of Commerce will soon issue regulations that reflect this provision.

VII. Soviet Union and Afghanistan ~~only~~ (Section 385.2 and 385.4(f))

A. A validated license is required for foreign policy purposes for exports to the Soviet Union or Afghanistan of:

1. technical data and designated equipment destined for the Kama River or ZIL truck plants (Soviet Union only); and

2. equipment and related technical data for the exploration or production of oil and gas.

B. Licensing policies are as follows:

1. Applications to export equipment or technical data to the Kama River or ZIL truck plants will generally be denied.

2. Applications to export technical data or equipment for manufacturing oil and gas exploration or production equipment will generally be denied.

3. Unless subject to multilateral review, applications for the export of oil and gas exploration and production equipment will be reviewed on a case-by-case basis and generally approved, and applications for the export of technical data for the exploration or production of oil and gas, will be reviewed on a case-by-case basis.

4. Applications to export oil and gas equipment to Afghanistan will generally be approved if for the civilian economy.

VIII. South Africa and Namibia (Section 385.4 (a))

These controls were issued as of October 11, 1985 (50 FR 47363, November 18, 1985) and are maintained pursuant to Executive Order No. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) and section 6(n) of the Act.

A. A validated export license is required for foreign policy purposes for export to South Africa and Namibia of:

1. items controlled pursuant to the United Nations arms embargo of South Africa, i.e., arms, related materials, and equipment and supplies used in the production and maintenance of arms and materials;

2. aircraft and helicopters;

3. all U.S.-origin commodities, parts and components and technical data for military or police entities or used to service equipment owned, controlled or used by or for such military or police entities;

4. computers, and goods to service computers for export or reexport to government consignees;

5. controlled commodities and technical data destined for nuclear production or utilization facilities.

B. Applications for validated export licenses will:

1. be denied for items controlled pursuant to the United Nations arms embargo of South Africa;

2. generally be considered favorably on a case-by-case basis for aircraft or helicopters for which adequate written assurances have been obtained that the aircraft or helicopters will not be put to military, paramilitary, or police use;

3. be denied for military or police entities except, on a case-by-case basis, for:

a) the export of medicines, medical supplies, medical equipment, related technical data, and parts and components; and

b) the export of commodities and related technical data, and parts and components, to be used in efforts to prevent acts of unlawful interference with international civil aviation;

4. generally be denied if the export of computers or goods to service computers is likely to be used by or for apartheid enforcing entities, with case-by-case exceptions possible for humanitarian purposes or for insubtantial U.S. content in foreign-origin computers;

5. be denied if the export is for a nuclear production or utilization facility or likely to be diverted to such a facility, except on a case-by-case basis for:

   a) exports to assist International Atomic Energy Agency (IAEA) safeguards or IAEA programs generally available to member states;

   b) technical programs to reduce proliferation risks;

   c) exports that are determined to be necessary for humanitarian reasons to protect the public health and safety.

IX. Nuclear Non-Proliferation (Part 778)

A. A validated license is required for the following commodities and related technical data:

   1. commodities and related technical data that could be of significance for nuclear explosive purposes; and

   2. any commodities and related technical data that the exporter knows or has reason to know will be used directly or indirectly for:

      a. designing, developing, fabricating, or testing nuclear weapons or nuclear explosive devices; or

      b. designing, constructing, fabricating, or operating the following facilities or components for such facilities:

         i. facilities for the chemical processing of irradiated special nuclear or source materials;

         ii. facilities for the production of heavy water;

         iii. facilities for the separation of isotopes of source and special nuclear material; or

         iv. facilities for the fabrication of nuclear reactor fuel containing plutonium.

B. In reviewing applications for validated licenses pursuant to sub-paragraph IX.A above, licensing policy will take into account:

   1. the stated end-use of the component;

   2. the sensitivity of the particular component and its availability elsewhere;

   3. the types of nuclear non-proliferation assurances or guarantees given in the particular case; and

   4. the non-proliferation credentials of the recipient country.

ENCLOSURE 2

Conclusions on Criteria and Alternative Means

Background

The following reports on foreign policy controls are included pursuant to Section 6(f) of the Export Administration Act of 1979, as amended, (the Act) and address:

A. Purpose of the controls

B. Department of Commerce considerations with respect to criteria in Section 6(b) of the Act: 1/

1. Probability of Achieving Intended Purpose

This section considers whether such controls are likely to achieve the intended foreign policy purpose, in light of other factors, including the availability from other countries of goods or technology subject to such controls, and that the foreign policy purpose cannot be achieved through negotiations or other alternative means.

2. Compatibility with Foreign Policy Objectives

This section considers whether the controls are compatible with the foreign policy objectives of the United States and with overall U.S. policy toward the country to which exports are subject to the controls.

3. Reaction of Other Countries

This section considers whether other countries' reactions to the imposition, extension, or expansion of such export controls by the United States are likely to render the controls ineffective in achieving the intended foreign policy purpose or to be counterproductive to U.S. foreign policy interests.

1/ Pursuant to Section 6(b)(2) of the Act, the Department is required to consider the criteria set forth in Section 6(b) when extending controls in effect prior to July 12, 1985.

4. Economic Impact

This section considers whether the effect of the controls on the export performance of the United States, the competitive position of the United States in the international economy, the international reputation of the United States as a reliable supplier of goods and technology, or on the economic well-being of individual U.S. companies and their employees and communities exceeds the benefit to U.S. foreign policy objectives.

5. Enforcement

This section considers the ability of the United States to enforce the controls.

6. Consequences of Modifying Controls

This section considers the foreign policy implications of modifying the control.

C. Alternative Means

This section of the report specifies the nature and results of any alternative means attempted, or the reasons for extending the controls without attempting any such alternative means.

D. Foreign Availability

This section considers the availability from other countries of goods or technology comparable to the goods or technology subject to the proposed export control and describes the nature and results of the efforts made pursuant to Section 6(h) of the Act to secure the cooperation of foreign government in controlling the foreign availability of such comparable goods or technology.

I. Human Rights

A. Purpose

Pursuant to Section 6(k) of the Act, crime control and detection equipment may be approved for export only pursuant to a validated export license, except to members of the North Atlantic Treaty Organization, Japan, Australia and New Zealand. The purpose of the control is to ensure that U.S.-origin police equipment is not exported to countries whose governments do not respect internationally recognized human rights. Denial of export license applications to such countries distances the United States from human rights violations and sends a concrete signal about our human rights concerns to the government of the importing country.

B. Considerations of the Department of Commerce with respect to the criteria set forth in Section 6(b) of the Act.

1. Probability of Achieving Intended Purposes

Because of the lack of complementary controls on the part of other producer nations, this control does not limit access to comparable equipment on the part of countries to which exports of U.S.-origin goods are denied. Nevertheless, the control does restrict access to U.S.-origin goods and this symbolic aspect of controls is the important element of their effectiveness. Denying exports of such goods to countries that continually violate internationally recognized human rights serves to distance the United States from countries about which we have human rights concerns.

2. Compatibility with Foreign Policy Objectives

This control program is fully consistent with U.S. policy in support of internationally recognized human rights, as expressed by this and previous Administrations and by the Congress.

3. Reaction of Other Countries

Other supplier countries have not placed similar human rights controls on their exports of crime control and detection equipment.

4. Economic Impact

The total value of approved exports of crime control and detection equipment for 1985 was approximately $25.4 million. These controls had a significant impact on certain individual companies in 1985. Specifically, 23 applications with a total value of about $7,515,089 were denied. Of this total, $7 million worth of one U.S. company's potential exports were denied in 1985.

Other companies have complained that even in cases where export licenses are granted, these controls impose an extraordinarily complex paperwork burden. Commodities subject to these controls cover a range of commodity classifications and processing codes, often requiring two or more separate license applications in order to make a single shipment.

5. Enforcement

There are no particular enforcement problems with respect to exports made directly from the United States Exporters are aware of the controls and the affected commodities are readily recognizable. The lack of complementary controls by other countries makes unauthorized reexports difficult to detect and deter, and do pose enforcement problems.

6. Consequences of Modifying Controls

Failure to extend these controls could be taken as a signal of decreased U.S. commitment to internationally recognized human rights and would be inconsistent with the U.S. policy and legislation on human rights.

C. Alternative Means

The U.S. government frequently uses bilateral diplomatic demarches and other means to convey its concerns about the human rights situation in various countries. These efforts do not obviate the need for continued export controls, pursuant to Section 6(k) of the Act.

D.- Foreign Availability

The foreign availability provision does not apply to Section 6(k) of the Export Administration Act of 1979, as amended [4/]. The usefulness of these controls in supporting U.S. policy on human rights issues was recognized by Congress in the 1985 Export Administration Amendments Act. Export controls on crime control instruments are explicitly excluded from foreign availability assessment.

4/ Amendments pertaining to foreign availability are not applicable to export controls in effect before July 12, 1985 under section 6(i) international obligations, (j) countries supporting international terrorism or (k) crime control instruments or to export controls on South Africa made effective by section 6(n) of the Export Administration Act of 1979, as amended. Export Administration Amendments Act of 1985, Public Law No. 97-64, section 108(g)(2), 99 Stat. 120, 134-35.

II. Anti-Terrorism

A. Purpose

Pursuant to section 6(j)(A) of the Act, the Secretary of State has determined that Libya, Syria, Iran, the People's Democratic Republic of Yemen (South Yemen) and Cuba have repeatedly provided support for acts of international terrorism. Controls on Libya are discussed in Section III and controls on exports to Cuba are discussed in Section IV of Enclosures I and II.

Pursuant to Section 6(j)(B) of the Act, the Secretary of State has determined that those exports subject to anti-terrorist controls would make a significant contribution to the military potential of designated countries, or would increase their ability to support acts of international terrorism. The controls also concretely distance the U.S. from states that have repeatedly supported acts of international terrorism, and demonstrate the firm resolve of the United States not to conduct unrestricted export trade with nations that do not adhere to acceptable norms of international behavior.

B. Considerations of the Department of Commerce with respect to the criteria set forth in Section 6(b) of the Act:

1. Probability of Achieving Intended Purpose

Although availability of comparable goods from foreign sources limits the impact of these controls, the controls are effective in achieving their purposes of restricting these countries' access to U.S.-origin commodities and technical data and to demonstrate the firm determination of the United States to oppose and distance itself from acts of international terrorism. Judicious application of export controls in conjunction with other efforts has served to enhance our overall effort to combat international terrorism.

2. Compatibility with Foreign Policy Objectives

Controls now in force are consistent with U.S. foreign policy toward countries determined to have repeatedly supported international terrorism and with other actions taken to discourage such support.

3. Reaction of Other Countries

In imposing controls, care has been taken to limit extraterritorial effects of these restrictions to minimize frictions with other friendly countries. Nevertheless, the controls as originally structured did have spillover effects on U.S. business relations with other countries not subject to anti-terrorist controls, particularly the Arab states on the Persian Gulf. Some of these nations had viewed the U.S. controls not as "anti-terrorist" but as "anti-Arab", since the countries originally covered by the controls were all Arab nations. Kuwait, although not subject to these controls, at one time urged other Gulf States to seek alternative suppliers of aircraft as a direct reaction to U.S. anti-terrorism controls. Such reactions were in part the basis for a reduction in sales of U.S. aircraft and avionics equipment in the Mid East.

The list of countries designated as supportive of international terrorism is revised whenever the record of a particular country warrants removal from, or addition to, coverage by anti-terrorism controls. In 1982, Iraq was removed while Cuba was added. Iran was added in 1984, and anti-terrorism controls applied to Iran were made more restrictive later that year. Such revisions should help demonstrate that the controls are applied on the basis of each country's record regarding support for repeated acts of international terrorism.

4. Economic Impact

Anti-terrorism controls have had varying effects on U.S. export performance in different years, as the program has undergone several modifications since 1982. The original program before March 1982 had pronounced negative effects on sales of U.S. aircraft. Modifications made in 1982 significantly reduced impediments to U.S. exports. The September 1984 expansion of the controls with respect to Iran hinder business for firms with potential exports in that country.

Before March 1982, anti-terrorism controls were applied to Iraq, Libya, Syria and the Peoples Democratic Republic of Yemen (PDR Yemen). The controls at that time created a disincentive to U.S. exports of civil aircraft, chiefly to Iraq and Libya. U.S. manufacturers of civil aircraft also blamed anti-terrorism controls for hampering their sales

efforts in other Arab nations ~~not~~ subject to these controls, since the controls were often viewed by Arab nations not as anti-terrorist but as anti-Arab. Such reactions to the controls created additional problems for U.S. exporters of civil aircraft in the Mideast market in general, before modifications were made in 1982.

In March 1982, the Secretary of State removed Iraq from the list of countries supporting international terrorism, citing Iraq's improved behavior. At the same time, the controls were modified to permit the export to Syria and PDR Yemen, without foreign policy review, of aircraft destined to regularly-scheduled civil airlines based in those countries, for which assurances have been provided against military use.

Modification of controls to permit sales to scheduled airlines was a major step toward reversing export disincentives without decreasing the firm U.S. stand against international terrorism. However, the 1981 imposition of stricter controls against Libya is still a major psychological obstacle to increasing the U.S. share of aircraft orders throughout the Middle East. Nevertheless, in 1983 U.S.-origin civil aircraft valued at $50 million were authorized for export to the national airline of the PDR Yemen under the revised policy. Alyemda, the national airlines of PDR Yemen, has a fleet that includes four large U.S.-manufactured civilian jet aircraft. These aircraft are aging, and are noisy and fuel-inefficient in comparison to contemporary aircraft. It is possible that Alyemda will consider the possible imposition of future U.S. export control when it becomes necessary to replace these aircraft, which could place U.S. manufacturers at a disadvantage. Nevertheless, the airline was willing to purchase newer U.S.-manufactured aircraft in 1983, after the anti-terrorism controls were modified to exempt regularly-scheduled civilian air carriers. In 1984, over $2.6 million worth of exports were authorized to PDR Yemen and in 1985, $942,834 were authorized. The 1984 sale of aircraft engines valued at $1.3 million to Alyemda to service existing commercial aircraft accounts for the significant difference between the two years.

Syria, on the other hand, has bought no U.S. aircraft since 1981, and Syria's regularly-scheduled civilian air carrier has made its recent purchases of civil aircraft from the Soviet Union. That Syria does not purchase from any Western supplier of civil aircraft suggests that factors other than U.S. export controls are responsible for the absence of U.S. aircraft exports to that country in recent years. In 1985 there were no applications for U.S.-origin aircraft to Syria.

In January 1984, the Secretary of State added Iran to the list of countries that provide support for acts of international terrorism. The Department of Commerce then made exports to Iran subject to those anti-terrorism controls applied to other designated countries. In September 1984, at the direction of the President, controls on exports to Iran were made more restrictive, with a larger expected effect on U.S. exports. With the imposition of these Iran controls, many exports that previously could have been approved are now denied. In 1985, the Department of Commerce denied over $25.8 million worth of exports to Iran. This figure may underestimate the loss of U.S. exports to Iran in 1985, since many companies with potential sales were discouraged from applying for a license because of the more restrictive controls. One company stated that it had avoided certain business opportunities for fear of violating U.S. law since the regulations often lacked clarity and contained obvious discrepancies concerning aircraft parts subject to foreign policy controls. These uncertainties and fear that the company will be liable if items are diverted to unauthorized uses have resulted in the company foregoing all sales to Iran and curtailing its expansion in certain overseas markets. Further, the company stated that business lost, from either foregone opportunities, denied applications or a delayed license process, had almost always gone to foreign competitors.

During the three years before the imposition of the new Iran controls, the Department licensed for export to Iran items valued at $104.5 million that are now generally subject to denial. In 1985, 100 license applications valued at $54.9 million were approved.

5. Enforcement

Enforcement of these controls as applied to Syria and POR Yemen poses no unusual enforcement problems.

The control of direct exports of aircraft and avionics from the United States to Iran poses no unusual enforcement problems. Reexports of U.S. aircraft and avionics, or the use of U.S.-origin material abroad to service Iranian aircraft, are considerably more difficult to detect and deter, and do create enforcement problems.

Controls that prohibit the export of items destined to military end-users or for military end-use in Iran, while permitting exports to civil end-users in that country, are also more difficult to enforce. However, the Department carefully reviews export applications for civil end-users in Iran, and approves only if there is convincing evidence that the proposed export is unlikely to be diverted to military use.

6. Consequences of Modifying Controls

The absence of these controls could lead to apprehension about the seriousness and consistency of our policy of opposing support for international terrorism.

C. Alternative Means

The U.S. has sought to demonstrate its opposition to support of international terrorism through a variety of other means, including efforts to persuade these countries to adhere to various conventions against hijacking, hostage taking and attacks on diplomats. These efforts have had some success. They do not obviate the need for continued export controls, pursuant to Section 6(j) of the Act.

D. Foreign Availability

The foreign availability provision does not apply to Section 6(j) of the Export Administration Act of 1979, as amended [1/]. Cognizant of the value of these controls in emphasizing the U.S. position toward countries supporting international terrorism, Congress specifically excluded them from foreign availability assessments otherwise required by the Export Administration Amendments Acts of 1985.

[1/] See footnote 2

III. Libya [5/]

Part One: Off-Highway Wheel Tractors

A. Purpose

Tractors subject to these anti-terrorist controls can be used to transport tanks and other outsized military vehicles and thereby be used to enhance the mobility of Libya's sizable armored forces. The controls ensure that only those U.S.-origin tractors destined to acceptable civil end-uses are exported to Libya, and thereby restrict an American contribution to Libyan military capabilities.

B. Department of Commerce considerations with respect to the criteria in Section 6(b) of the Act:

1. Probability of Achieving Intended Purposes

The controls restrict a U.S. contribution to Libyan military activities, by careful review of exports of these vehicles to ensure against military use.

2. Compatibility with Foreign Policy Objectives

These controls are consistent with U.S. policy to prohibit military-related sales to Libya.

3. Reaction of Other Countries

No other country has taken similar action.

4. Economic Impact

In 1977, the U.S. exported to Libya 330 vehicles of this type with a value of $7.1 million. With the imposition of special controls in 1978, the number licensed dropped to 14 vehicles valued at $300,000. In 1982, licenses valued at $2.2 million were approved, authorizing six tractors and replacement parts for previously exported tractors. Licenses approved in 1983 for 15 tractors and replacements parts were valued at $6.1 million. In 1984, 54 tractors and replacement parts valued at $22.6 million were licensed. In 1985, 27 licenses for tractors and replacement parts valued at $15.7 million were approved. All of the tractors licensed were destined for acceptable civil uses.

[5/] These controls are consistent with new controls imposed by the Libyan Sanctions Regulations. See Enclosure I, section III.

As these controls are directed at exports destined to military rather than civilian end-uses, they have had only a modestly negative impact on the international reputation of the United States as a reliable supplier, and on the producing industry, its employees and communities.

5. Enforcement

No unusual problems are being encountered in the enforcement of these controls.

6. Consequences of Modifying Controls

Discontinuing the controls could be viewed by other friendly countries in the region as a U.S. contribution to strengthening Libyan capability to mount hostile actions.

C. Alternative Means

No reasonable alternatives to direct controls exist.

D. Foreign Availability

The foreign availability provision does not apply to Section 6(j) of the Export Administration Act of 1979, as amended.[2/] Recognizing the significance of these controls in expressing U.S. position towards countries supporting international terrorism, Congress specifically excluded these controls from foreign availability assessment.

[2/] See Footnote 2

Part Two: Aircraft and Avionics

A. Purpose

Anti-terrorist export controls on aircraft, aircraft components and accessories destined to Libya are designed to restrict a U.S. contribution to Libya's military activities and its efforts to destabilize nations friendly to the United States aircraft subject to these controls can be used to transport cargo or troops or to carry out observation and reconnaissance missions. Libya has been using civil aircraft to support military intervention in neighboring countries.

B. The Department of Commerce consideration with respect to the criteria in Section 6(b) of the Act:

1. Probability of Achieving Intended Purposes

These controls limit Libyan capability to use U.S.-origin aircraft in military ventures. They also reduce Libyan access to aircraft of foreign-origin, because the foreign aircraft industry is in most instances heavily dependent on U.S.-origin components and therefore such foreign-origin aircraft is also subject to U.S. control.

2. Compatibility with Foreign Policy Objectives

Because these controls are intended to prevent a U.S. contribution to Libyan military activities and thereby diminish Libyan ability to undermine regional stability, they are consistent with U.S. foreign policy goals and with policies on military-related sales to Libya.

3. Reaction of Other Countries

Other countries in the region, especially those most threatened by Libyan aggression, could view these controls favorably as evidence of continued U.S. opposition to the aggressive and destabilizing policies of Libya. No other supplier country has taken similar action.

Because of the extraterritorial reach of these controls, whereby foreign-origin aircraft containing U.S.-origin parts, components and avionics are subject to U.S. control, we expect to continue to encounter frictions with other friendly countries.

4. Economic Impact

Aircraft licenses approved for Libya declined from $14.8 million in 1979 to $1.9 million in 1980 and $944,000 in 1981. No export licenses for aircraft have been approved since 1982.

U.S. aircraft manufacturers have been prohibited from making many new sales, including $597.5 million of large civil transport aircraft denied in 1983 alone. Applications to export aircraft valued at $33.6 million were denied in 1984 and applications to export aircraft and related equipment valued at $3.2 million were denied in 1985. The 1985 figures do not begin to measure the economic cost of controls because U.S. manufacturers of aircraft aware of U.S. export restrictions no longer market U.S.-origin aircraft in Libya nor submit export license applications.

Export controls have affected the sales of not only domestic aircraft assemblers but also of part suppliers. Controls have also prevented sales of spare parts, and U.S. firms report that the controls have resulted in their being precluded from major aircraft projects in third countries that have business in Libya. U.S. firms say that European manufacturers are making plans to replace U.S. components and technical data in major civil aviation projects. There have been reports that foreign competitors have cited our Libya controls in bidding for aircraft sales elsewhere in the Mideast and Africa, suggesting that the United States could take similar action against other countries that use U.S.-origin aircraft.

5. Enforcement

The control of direct exports from the United States to Libya poses no unusual enforcement problems. Reexports of U.S. aircraft and avionics, or the use of U.S.-origin material abroad to service Libyan aircraft, are considerably more difficult to detect and deter, and do create enforcement problems.

6. Consequences of Modifying Controls

Relaxing or discontinuing of such controls might be seen by other friendly countries as a lessening of U.S. concern over aggressive Libyan actions in the region.

C. Alternative Means

Previous Libyan use of U.S.-origin aircraft for military purposes indicates that no feasible measures short of direct controls would be adequate.

D. Foreign Availability

The foreign availability provision does not apply to section 6(j) of the Export Administration Act of 1979, as amended.[1]

[1] See footnote 2

Part Three: Ras Lanuf Petrochemical Complex

A. Purpose

The objective of this anti-terrorist export control program is to restrict a U.S. contribution to this significant Libyan industrial project, which will add substantial capacity to Libya's oil and gas industry, at a time when Libya continues its support of international terrorism, and otherwise engage in unacceptable international behavior.

B. Considerations of the Department of Commerce with respect to the criteria set forth in Section 6(b) of the Act:

1. Probability of Achieving Intended Purposes

Restrictions on exports to Ras Lanuf have, since their imposition in 1984, denied U.S. commodities and technical data to what is the largest and most significant petrochemical facility in Libya.

2. Compatibility with Foreign Policy Objectives

It would be contrary to U.S. foreign policy to permit U.S. contribution to this prominent Libyan industrial complex at a time when Libya persists in activities that are detrimental to U.S. interests. Restricting exports to the Ras Lanuf complex has brought the Libyan export control program into greater consistency with overall U.S. policy toward that country.

3. Reaction of Other Countries

We have consulted with our allies on the subject of these controls, and no negative reaction has been received. Other countries have not taken similar action.

4. Economic Impact

U.S. firms report that since 1984 they lost at least $150+ million in contracts for equipment and services to foreign competitors as a result of export controls applied to Ras Lanuf. Much of the equipment under these contracts would have been sourced from foreign manufacturers by the U.S. firms, because of U.S. export restrictions on comparable equipment of U.S.-origin. Nonetheless, U.S. firms had expected to receive about $50 million in management, procurement and engineering fees, had they not been restricted by the Ras Lanuf controls.

U.S. firms had also expected to receive a substantial portion of future contracts to be awarded for the development of refinery and petrochemical operations, which has an overall potential value of $4 to $6 billion. Not all of this business would have gone to U.S. firms, nor is it certain that the ambitious Ras Lanuf project will be completed in its full scope, but these figures do represent potential U.S. export earnings that have now been closed to U.S. firms. U.S. firms estimate that they will lose well over $100 million in contracts they expected to be awarded during 1985, in the absence of controls.

U.S. firms report that the Libyans are pre-selecting suppliers of electronic and instrumentation components for Ras Lanuf, in order to ensure standardization of equipment throughout the project. Business concerns are that, even if future events warrant the relaxation of export controls, U.S. suppliers will by then be precluded from supplying equipment to the project's prime contractors.

One U.S. firm informed us that the controls have prevented it from supplying spare parts for a low-technology pneumatic control system for Ras Lanuf that had been exported to Libya before the imposition of controls. Since the Libyans can no longer obtain necessary spare parts for the $3 million installation, they are being forced to remove and replace it with similar equipment of foreign manufacture for which they will be able to obtain spares. The U.S. firm believes that, as a result, U.S. participation in other large projects that are not subject to U.S. export restrictions will nonetheless be restricted by the Libyans themselves. Contracts for other large projects will be awarded to foreign competitors because of Libyan concerns that future U.S. export controls could deny them access to spare parts for U.S.-origin equipment. U.S. firms have also expressed concern that contract managers in other Mideast and North African countries, even though not presently subject to U.S. controls, may decline to procure from U.S. sources, because they fear that future U.S. export controls may be applied that would deny them access to necessary spare parts.

5. Enforcement

The controls raise no unusual enforcement problems.

6. Consequences of Modifying Controls

Without the controls, the United States would be seen as inconsistent in its opposition to unacceptable Libyan behavior because U.S. firms would be participating in the development of that country's largest and most sophisticated industrial project.

C. Alternative Means

No alternative to direct controls would prohibit a U.S. contribution to the petrochemical complex.

D. Foreign Availability

The foreign availability provision does not apply to section 6(j) of the Export Administration Act of 1979, as amended.[1/]

[1/] See footnote 2

Part Four: Other restrictions

A. Purpose

The objective is to demonstrate U.S. opposition to, and to distance the U.S. from, Libya's support for acts of international terrorism, international subversive activities and intervention in the affairs of neighboring states by inhibiting Libyan receipt of U.S.-origin material resources.

B. Considerations of the Department of Commerce with Respect to the Criteria set forth in Section 6(b) of the Act:

1. Probability of Achieving Intended Purposes

The controls deny to Libya U.S.-origin national security controlled items, and oil and gas equipment unavailable from foreign sources. The controls also provide the mechanism whereby the United States can monitor these exports and prohibit such exports if they would be contrary to U.S. foreign policy interests. The controls have restricted a U.S. contribution to Libyan capacity to engage in activities detrimental to the foreign policy of the United States, and have sent a clear signal that the United States is unwilling to permit unrestricted trade in light of Libya's behavior.

2. Compatibility with Foreign Policy Objectives

These controls are consistent with the express U.S. policy of encouraging Libya to adopt acceptable norms of international behavior.

3. Reaction of Other Countries

There is a general understanding in other countries of the international threat posed by Libyan subversive activities. When we imposed these controls in 1982, we explained our policies to other governments and urged them to adopt similarly firm policies. To date, no other country has taken similar action. In imposing controls, care has been taken to limit the extraterritorial effects of these restrictions to minimize friction with other friendly countries.

4. Economic Impact

U.S. exports to Libya prior to imposition of controls accounted for less than one percent of all U.S. exports in 1981, amounting to approximately $813 million. U.S. exports to Libya have declined significantly from that level since the imposition of comprehensive controls in March, 1982. U.S. exports fell to $301 million for 1982, a drop of over $500 million. Exports in 1983 totalled $191 million, down $110 million from 1982. For the first nine months of 1984, U.S. exports to Libya totalled $182 million, approximately the same level maintained in the same period in 1983. For the first nine months of 1985, U.S. exports were $281 million, an increase of $99 million over the same period in 1984. The commercial goods with the largest increases were industrial and construction machinery.

Our consultations with industry revealed substantial concern over the potential effect of controls on those firms with a heavy involvement in the Libyan market. Some firms felt that not only would they lose direct Libyan business, but that Libyan efforts to procure equipment elsewhere would weaken their ability to compete worldwide. Their rationale was that their own production would have to be cut back, while the production of foreign competitors would increase, thus giving the competitors the ability to lower prices and capture a larger share of world markets now dominated by U.S. firms.

The greatest impact of these controls has been on petroleum services companies, which suffered a decline in their exports to Libya. While licensing policy provides for approval in most cases where foreign availability exists, firms remain concerned that the need to apply for licenses and the delays imposed by the license review process put them at a competitive disadvantage in the Libyan market and raise questions regarding the reliability of the United States as a supplier country.

S. Enforcement

The controls raise no unusual enforcement problems.

6. Consequences of Modifying Controls

Failure to extend these controls would impede the U.S. objective of influencing Libyan behavior in a positive direction. Moreover, failure to continue the controls would place the United States in the anomalous position of objecting to Libyan financing of disruptive activities while making available, through trade, resources that could be used to support such activities.

C. Alternative Means

These controls complement diplomatic means that have been and will continue to be used to attempt to influence Libyan behavior.

D. Foreign Availability

The foreign availability provision does not apply to section 6(j) of the Export Administration Act of 1979, as amended.*

* See Footnote 2

IV. Chemicals with use in manufacture of chemical weapons (Iraq and Iran)

A. Purpose

The controls are intended to prohibit the export from the U.S. of chemicals that are intended for chemical weapons use in the Iran-Iraq war, and to demonstrate the firm opposition of the U.S. to the use of chemical weapons.

The controls were imposed in March 1984, after evidence was obtained that attempts might be made to procure certain chemicals that have primarily agricultural applications, but that were likely to be used in the manufacture of chemical weapons for use in the Iran-Iraq war. Five chemicals were made subject to these foreign policy controls that same month. In September, 1984, three additional chemicals were identified and made subject to these controls.

B. Department of Commerce considerations with respect to the criteria in Section 6(b) of the Act:

1. Probability of Achieving Intended Purpose

The controls have restricted the export from the United States of these chemicals to Iran and Iraq and thereby have prevented a direct U.S. contribution to the use of chemical weapons in the Iran-Iraq war.

2. Compatibility with Foreign Policy Objectives

This control is fully compatible with expressed U.S. policies of opposition to the prohibited use of chemical weapons, to maintain neutrality in the Iran-Iraq war, and to promote a mediated end to that war.

3. Reaction of Other Countries

We have consulted with our allies and other nations, and have received no negative reaction to this control. Consistent with our expectation that other countries would put similar controls in place, and to avoid friction with our allies over extraterritorial questions, our controls have not sought to

restrict the reexport of U.S.-origin chemicals from abroad. The 12 members of the European Community, as well as Australia, Canada, Japan and New Zealand, have imposed similar controls.

4. Economic Impact

Consultations with industry revealed no concern over the impact of this control on individual companies or the industry as a whole. Some firms expressed strong support for the control, and no criticism of the action was received. As the control is of limited scope, both in terms of commodities and destinations, the effect on U.S. export performance or on the reputation of the U.S. as a reliable supplier should be negligible.

5. Enforcement

No unusual enforcement problems are raised by the control of the export of these chemicals from the United States.

6. Consequences of Modifying Controls

Without the control, there would be no way to prevent the export of these chemicals from the United States, for use in chemical warfare in the Iran-Iraq war.

C. Alternative Means

Alternative means to curtail chemical warfare, such as diplomatic negotiations, do not obviate the need for this control.

D. Foreign Availability

With the exception of one chemical, there are foreign sources of all other chemicals subject to this control. However, sixteen other countries control four of these chemicals, and several of these countries control more substances, to Iran and Iraq. The Office of Foreign Availability has reviewed the international sources of the chemicals covered by these controls, and the data developed will be used in attempts to negotiate an end to known sources of foreign availability. Notwithstanding any other availability from foreign sources, the control is effective in restricting a U.S. contribution to chemical weapons manufactured for use in the Iran-Iraq war. Discontinuing these controls could send a signal that the United States has changed its policy in opposition to the prohibited use of chemical weapons and would call into question the U.S. willingness to cooperate with our friends and allies in attempting to bring an end to the Iran-Iraq war and stability to that volatile region.

V. Regional Stability

A. Purpose

These controls are imposed on vehicles built to military specifications and items used in the manufacture of military equipment. They provide an effective mechanism for the United States to monitor the export of these items in order to restrict U.S.-origin commodities that would adversely affect regional stability. Denial of these items to certain countries in regions of conflict and tension limits an American contribution to the destabilization of such regions.

B. Considerations of the Department of Commerce with respect to the criteria set forth in Section 6(b) of the Act:

1. Probability of Achieving Intended Purposes

The controls have permitted the United States to restrict the export of U.S.-origin militarily-useful commodities when their export would contribute significantly to the destabilization of the region to which commodities would be destined.

2. Compatibility with Foreign Policy Objectives

These controls are consistent with U.S. foreign policy goals to promote peace and stability and to avoid U.S. military operations or exports that might contribute to weapons production capabilities in areas of instability.

3. Reaction of Other Countries

A number of other countries limit exports of military equipment to areas of tension. These countries recognize the desirability of restricting goods that could contribute to regional tensions.

4. Economic Impact

Licenses for these commodities generally are approved, unless the export would contribute materially to regional instability. As the Department cannot predict when or if problems may arise in a region that is currently stable, we cannot assess accurately the possible impact of these controls on U.S. exports. During 1984, the Department approved applications valued at $323.3 million, and denied none. In 1985, 91 applications valued at $120.2 million were approved. One application valued at $350,000 was denied.

5. Enforcement

There are no unusual enforcement problems.

6. Consequences of Modifying Controls

The absence of controls would make it difficult to manage U.S. foreign policy in sensitive regions and to avoid exports that might contribute to destabilization in such areas.

C. Alternative Means

No workable alternatives to direct controls have been identified.

D. Foreign Availability

Foreign sources of these goods do exist, but the effectiveness of the control is not diminished. These controls restrict the export of U.S.-origin, militarily-useful commodities to regions where use of the commodities would further destabilize any particular area. Such exports would be detrimental to U.S. foreign policy interests in these areas. Even though negotiation with other allied governments have not resulted in similar action, the purpose of the control is effectively achieved in restricting access to U.S.-origin commodities and, thereby, limiting the U.S. contribution to the military capabilities of countries in regions of instability.

VI. North Korea, Vietnam, Cambodia, Cuba

The embargoes on exports to North Korea, Vietnam, Cambodia, and Cuba have been administered under the Export Administration Act and are consistent with the Trading with the Enemy Act, as amended. The latter authority continues by virtue of Sections 101 (b-c) and 207 of Public Law 95-223, and has been extended annually pursuant to national interest determinations.

A. Purpose

Originally the embargoes on each country were individually imposed for security reasons. While the original circumstances that prompted the imposition of controls have changed, present circumstances require that these controls be continued.

1. North Korea

North Korea remains technically in a state of war with the United States, the Republic of Korea, and the United Nations. It has been expanding its offensive military capability and its subversive potential while continuing to suppress human rights.

2. Vietnam

The embargo against Vietnam was established originally against North Vietnam during the Vietnam conflict. It was subsequently enlarged to include the rest of the country with the fall of the South Vietnamese government in 1975. The invasion and continued occupation of Cambodia have blocked any further discussion of normalization between the U.S. and Vietnam.

3. Cambodia

Controls on exports to Cambodia are similar to those affecting Vietnam, particularly in light of the present occupation of the country by Vietnam.

4. Cuba

The embargo against Cuba came at a time when Cuban actions seriously threatened the stability of the Western hemisphere. Cuba continues to promote armed subversion in Central America and elsewhere. There is also a serious problem of compensation for U.S. citizens whose property was expropriated by the Cuban government.

The objective of the embargoes is to demonstrate the unwillingness of the United States to maintain normal trade with these countries until they take steps to improve their relations with the United States.

B. Department of Commerce considerations with respect to the criteria in Section 6(b) of the Act:

1. Probability of Achieving Intended Purpose

The embargoes have denied these nations the substantial benefits of normal trade relations with the United States. They continue to create pressure on the governments of these countries to modify their policies, because the embargoes will not be lifted except as part of a general improvement of relations.

2. Compatibility with Foreign Policy Objectives

The controls are a useful complement to U.S. foreign policy in other aspects of our relations with these countries because they help create pressure on these governments to modify their policies and thereby improve their relations with the United States.

3. Reaction of Other Countries

No other country has imposed comparable controls on exports to any of these four countries.

With Vietnam's invasion of Cambodia, Vietnam has lost credit and project funding from the World Bank, the International Monetary Fund, and the People's Republic of China. Japan and Sweden have canceled aid projects of considerable size.

4. Economic Impact

A. North Korea

Two licenses were approved for export to North Korea in 1985, one for the export of medical equipment valued at about $9,000, and the other for the temporary export of news broadcasting equipment for use by a U.S. television firm on assignment in that country.

The Department's most recent figures show that North Korea's imports from the West were only about $349 million in 1984. Even if U.S. relations were normalized, the prospects for a major trade expansion are slight. The Soviet Union and China would remain North Korea's major trading partners. The U.S. might capture a share of North Korea's wheat imports at Australia's expense, as well as make minor inroads in the market shares of Japan and the European Community for industrial goods. At best, the United States might export $25 million worth of agricultural products and $10 million worth of manufactured goods after five years of resumed trade.

B. Vietnam

In 1985, the Department approved applications for exports to Vietnam valued at approximately $51.8 million.

Vietnam's total hard currency imports from the West amounted to $468 million in 1984, the latest year for which statistics are available. This is an increase of $138 million over 1983, but represents the continued decline from the 1978 high level of $675 million. The decline reflects the continued international isolation of Vietnam following the invasion of Cambodia.

The trade potential of U.S. exports to Vietnam under normalized conditions would be limited by the amount of hard currency credit made available to the Vietnamese from international sources as well as from the United States. While it is possible that the Vietnamese could purchase over $1 billion worth of heavy equipment and machinery, grain, and foodstuffs from the United States by the fifth year of normalized conditions, that level of trade could probably be reached only by easy credit terms.

The effects of the occupation of Cambodia and consequent cut-off of Chinese aid have put extreme stress on virtually every sector of the Vietnamese economy. The loss of thousands of educated and skilled workers through emigration has severely hampered productivity in many sectors. Under present conditions, the Soviet Union seems certain to remain the dominant trade partner and source of massive aid. As a result, U.S.-Vietnamese trade would likely continue at insignificant levels even if the embargo were removed.

C. Cambodia

In 1985, the Department approved applications valued at approximately $2.3 million for the export to Cambodia of non-commercial, charitable donations. Due to the Vietnamese invasion and occupation of Cambodia, no other reliable trade statistics are available.

D. Cuba

Cuba's hard currency trade declined in 1983, reflecting low world commodity prices, and the inability of Cuba to diversify from its traditional exports of sugar and nickel. Cuban imports from market economies totalled $964 million in 1983, down from the 1982 level of $1.2 million. Purchases from the West remain below the 1975 high of $1.5 billion. During 1984, the Department approved applications for export to Cuba valued at approximately $8.7 million. These consisted mainly of gift parcels. Other approvals included authorizations for shipments to third country embassies in Havana, and equipment to maintain the essential U.S.-Cuba telecommunications link. In 1985, 37 applications valued at $10.9 million were approved and 5 applications valued at $65,058 were denied.

If the embargo were lifted, the Soviet Union would remain Cuba's major trading partner, at least initially. United States exporters, with the advantage of geographic proximity, could be expected to replace some exports now coming from Japan, Canada, and Western Europe.

If the U.S. export embargo were now removed, U.S. exports to Cuba would probably reach no more than $100-150 million the first year and not exceed $300 million annually over the medium term.

The potential for U.S. exports to Cuba, with that country's 10 million inhabitants and its proximity to the U.S., is probably much higher. However, Cuba would require massive foreign or domestic investment to stimulate its economy and export earnings to pay for imports from the U.S. or other Western countries. Such investment would not occur under Cuba's current economic system, even without U.S. trade restrictions.

None of these nations represents a substantial potential market for any specific U.S. industries. Therefore, the embargoes against them have not measurably retarded the ability of any U.S. economic sector to compete in the world market.

5. Enforcement

The controls on North Korea, Vietnam, and Cambodia are understood and are generally supported by the public, and pose no unusual enforcement problems. The large volume of gift parcels to Vietnam represents potential for leakage in the embargo; efforts are made at U.S. ports of export to ensure that only permitted goods and quantities are being sent as gifts. Enforcement of controls on Cuba remains effective.

6. Consequences of Modifying Controls

Any termination of a virtual trade embargo would entail significant foreign policy ramifications. Such a step, if taken, would have to be clearly consistent with then-current U.S. policy regarding the affected country and appropriate reciprocal action would be expected.

C. Alternative Means

A. North Korea

No alternative means are appropriate at this time, in view of the continued state of tension on the Korean Peninsula.

B. Vietnam

In the case of Vietnam, the United States announced its willingness some time ago to end the embargo at such time as normal diplomatic relations are established and ambassadors are in place.

C. Cambodia

Under present circumstances, alternative means available to the United States are severely limited.

D. Cuba

No alternative means are appropriate.

D. Foreign Availability

As this is a complete trade embargo to these countries, there are obvious foreign sources for most of these goods and commodities controlled. When each program was established, the United States approached other allied governments to gain their cooperation. Notwithstanding foreign sources, the embargoes to these countries are effective in demonstrating U.S. opposition to military and subversive activities that undermine the interests of the United States. Further, relaxing of these controls would indicate a shift in U.S. policy without a significant change in U.S. relationship with these countries; therefore, the embargoes should remain in effect until such change occurs.

VII. Soviet Union and Afghanistan

Part One: Exports for the Kama River and ZIL Truck Plants

A. Purpose

Controls on these two plants are designed to deny U.S.-origin equipment useful in the production of trucks. Trucks from the Kama River plant were used in the Soviet invasion of Afghanistan. The controls also apply to the ZIL plant, as that facility also produces vehicles for the Soviet military.

B. Department of Commerce considerations with respect to the criteria in Section 6(b) of the Act:

1. Probability of Achieving Intended Purpose

The controls have restricted a U.S. contribution to these plants and continue to demonstrate the opposition of the United States to the Soviet invasion and occupation of Afghanistan, and the Soviet role in Poland.

2. Compatibility with Foreign Policy Objectives

These controls are compatible with other steps we have taken in response to Soviet actions.

3. Reaction of Other Countries

No other country has imposed comparable export controls in response to Soviet actions.

4. Economic Impact

The initial prohibition of the export of a second diesel engine assembly line to the Kama River plant primarily affected an $8 million sale by a U.S. company. At that time, the company was contacted and stated that the loss of business associated with the restriction had little impact on its employees and the community in which it is located, as alternative orders were available.

A number of firms did have orders for equipment for these plants that could have been shipped under General License previously, but the Department is unaware of any sales by U.S. firms of the other commodities now under control to Kama River or ZIL that approaches the magnitude or value of the diesel engine assembly line.

Nevertheless, some exporters believe the controls have been a factor in the decline of the U.S. share of the Soviet market for Western machine tools. U.S. exporters report that Soviet plant managers and trade officials have expressed doubts about relying on U.S. firms, citing uncertainty about potential new controls that could deny access to spare parts or follow-on contracts in the future. Some U.S. companies report that they no longer seek bids for business in any part of the Soviet Union because of the risk that export controls could be applied to their products or customers at some later date.

Exporters believe that the effect of the controls can reach beyond the Soviet market and can impede licensing and joint-venture agreements in Western Europe as well. Potential European partners are not always willing to make required certifications against shipments to Kama River and ZIL of automotive machine tools that are the product of U.S.-origin technical data. One exporter estimated that $1 billion annually in licensing and joint-venture agreements for machine tool manufacture in Western Europe are jeopardized by the certification requirements; the firm cited one potentially lucrative agreement that was prevented when the West German partner declined to make certification against export to Kama River and ZIL.

In the early 1970s, the domestic machine tool industry actively promoted exports to the Soviet Union. U.S. exports of machine tools increased from $6 million in 1970 to $89 million in 1975. In 1984, exports to the Soviet Union amounted to only $0.6 million. The first six months of 1985, exports totaled $0.1 million. The Soviet Union has met their machine tool needs with equipment from non-U.S. suppliers--including suppliers from Japan, West Germany, Italy, and Switzerland--and through the development of their own machine tool industry and the industries of other CEMA countries.

5. Enforcement

No problem has been encountered in enforcing the initial prohibition regarding the diesel engine assembly line export to the Kama River plant. The affected U.S. firms are complying with this export restriction.

While no problems unusual to enforcement of unilateral controls to designated entities within the Soviet Union have been encountered, the controls can be difficult to enforce. Many of the controlled items can still be shipped to other destinations in the Soviet Union without a validated license, and some of these products may be more fungible between consignees than would be the case for turnkey installation of a diesel engine assembly line or a similar large project. Care is being taken to advise U.S. producers of these commodities of the nature of the controls and the prohibition against resale of such items from any consignee to either the Kama River or the ZIL plant.

6. Consequences of Modifying Controls

In the absence of the prohibition of the export of diesel engine assembly lines to the Kama River plant, shipment of the assembly line equipment from the United States would have commenced in early May 1980.

The expansion of controls to include the ZIL plant and exports of other items, provided consistency with the strong U.S. response to the invasion of Afghanistan and repression in Poland. Absence of these controls would continue to permit the sale of many items useful in producing vehicles for military use.

C. Alternative Means

No alternative means could prevent the export from the United States of diesel engine assembly lines and other significant U.S.-origin components for plants that contribute to Soviet production of vehicles for the military.

D. Foreign Availability

While foreign sources of these goods do exist, the control is effective in restricting U.S.-origin equipment used in truck production from Soviet military use. The relaxing of these controls would indicate a shift in U.S. opposition to the Soviet invasion of Afghanistan and such a shift would conflict with U.S. foreign policy interests. Negotiations with other allied governments have not resulted in the imposition of similar controls, nonetheless the purpose of restricting certain U.S.-origin equipment from military use is effectively achieved.

Two commenters noted that foreign suppliers have gradually moved away from the use of U.S. oil and gas components and technology because of concerns about how future foreign policy controls may affect U.S. business activities abroad. The association concluded, "Failure to address these foreign efforts to 'engineer out' U.S. components and technology will lead inevitably to a continuing reduction in business ties between the U.S. industry and leading foreign suppliers, with long-run damage to the technological position and revenues of the U.S. industry." The association argues that the threat of future controls has put pressure on U.S. business to move their production and R & D activities abroad.

Finally, the association argued that one major and often ignored consequence of the controls on the U.S. oil and gas industry was its "loss of competitive position in third markets, as foreign competitors have taken advantage of the economic and technological benefits of Soviet business to enhance their overall international position."

On the basis of these arguments, respondents concluded that the economic costs of the control program far exceed its marginal foreign policy benefits and the control program should therefore not be extended. The association concluded that the removal of these controls "would give U.S. suppliers of exploration and production equipment and services a chance to reassert themselves in the Soviet market-- and that failure to remove the control would make any such effort problematic at best."

The CHAIRMAN. Thank you very much, Mr. Secretary.

One of the concerns raised during the recent review of the Export Administration Act was the lack of automation of the Office of Export Administration.

For example, for a certain period of time, the list of potential diverters of technology, the so-called enforcement screen, was kept on a Rolodex. Since then, progress has been made to augment that and other procedures at Commerce.

Do the budget figures requested by the administration for fiscal year 1987 provide sufficient funds to continue this process of automation?

Secretary BALDRIGE. It provides for automatic screening on everything, Senator.

We have had a backlog in the recent past of some 2,000 cases. A good part of that was due to an improper data base. That is being fixed. We should be down to well within the guidelines or close to zero by the month of April.

So I feel that has been taken care of.

The CHAIRMAN. So in addition to automated screening, though, you feel that speedier licensing decisions——

Secretary BALDRIGE. Yes; we have reduced free world case licensing applications from an average of 46 days in the first part of 1984 to 17 days in the fourth quarter of last year. This should continue to improve.

For a while, the Chinese cases were a bottleneck, but we have straightened that out with a special team in Commerce, and we have also helped unlock the bottleneck at CoCom. So the Chinese licenses are going through in good order.

The CHAIRMAN. The budget figures for export promotion programs represent a decline from fiscal year 1986.

Can you give me an estimate of how you expect this will be reflected in export promotion activities?

ADEQUATE BUDGET

Secretary BALDRIGE. I think we will be able to satisfy our charter, Senator. We have done some consolidation in some places where the opportunities weren't as good, but we have transferred people to other areas, such as the People's Republic of China [PRC], for example, in India and other Pacific rim countries where there are expanding opportunities for United States exports.

So I feel all right about our budget.

The CHAIRMAN. In light of the large trade deficits, does it make a great deal of sense to try to economize on export promotion? Aren't those budget reductions rather contradictory to all I hear from the administration about the concern about record trade deficits?

Secretary BALDRIGE. Well, the idea behind the foreign commercial service, the way I see it, is to get the best job done possible with the resources you have. I think we have upgraded that service by a tremendous amount in the last 5 years. I think the quality is much higher. I think you reach a point of diminishing returns on how much more you could do.

Our trade deficit, I would say the largest reason for that has been the strength of the dollar. We are, as you know, addressing that.

Another reason was a large amount of business that was lost to developing countries. Some $22 billion of that deficit is a swing because developing countries simply have not been able to import what they did before.

There are some other reasons, too, but I don't think the foreign commercial service could literally handle the trade deficit reduction by itself.

The CHAIRMAN. I agree with that. Obviously, it is a many faceted problem.

Senator Proxmire and I strongly advocated the establishment of an Undersecretary for Export Administration, partly as a means of elevating export promotion activities. That provision was made a law last year.

Does your 1987 budget request take that change into account?

Secretary BALDRIGE. We think we can handle that with the existing staff, moving people around to get the job done.

The CHAIRMAN. Do you have an idea when you will have the necessary reorganization take place?

Secretary BALDRIGE. We will have that done this year. I can't give you the exact date right now, but we plan on accomplishing that this year.

The CHAIRMAN. Senator Proxmire.

Senator PROXMIRE. Thank you, Mr. Chairman.

Mr. Chairman, I have a statement by Senator Lloyd Bentsen and ask that it be printed in the record.

If possible, could the Secretary also answer in writing three questions that Senator Bentsen has posed?

The CHAIRMAN. Without objection, we will have that statement printed in the record.

[The following statement of Senator Bentsen was subsequently supplied for the record:]

STATEMENT BY U.S. SENATOR LLOYD BENTSEN

Mr. Chairman, I appreciate your having this hearing on the use of foreign policy controls under the Export Adminstration Act. I am deeply concerned about the policies which are being followed in restricting U.S. exports. The United States has a well-deserved reputation for shooting itself in the foot, and unfortunately this administration is continuing in that tradition.

Recently the administration decided to continue, with only minor changes, export restrictions on the sale of oilfield equipment to the U.S.S.R. This was despite the fact that the restrictions do not appear to have had any effect other than to damage the U.S. industry. U.S. companies have lost millions of dollars worth of sales and stand to lose much more. Helped by our restrictions, European countries and Japan have suddenly developed oil field equipment industries. These foreign companies now produce and sell, without restrictions, many products for which U.S. companies once dominated the market.

When products are freely available from other countries, then unilaterial restrictions by the United States will not work. It does not matter whether the product is grain or oil field equipment. The principle is the same.

I do not believe that the report submitted by the Commerce Department adequately addresses many of the questions that should be considered in making these decisions. I have attached a list of questions for Secretary Baldrige, and I would appreciate it if the committee would submit them to him for response.

QUESTIONS FROM U.S. SENATOR LLOYD BENTSEN FOR SECRETARY MALCOLM BALDRIGE, SECRETARY OF COMMERCE

Question 1. What benefits has the oil and gas control produced to date in terms of Soviet human rights policy, or in Soviet policy toward Poland and Afghanistan? There is a statutory requirement that the administration consider and report to Congress on the probability that the control will achieve its intended purpose and on the consequences to be expected from modifying or dropping the control. Yet your report talks only about using these controls to send a message to the Soviet Union, to "convey U.S. opposition to specific Soviet actions". If such benefits have been hard to find, what makes the administration believe that the controls will have a positive influence in the future that will justify their continuing damage to an important domestic industry?

Answer 1. The purpose of these controls is to provide a mechanism whereby the United States Government can, when necessary and appropriate, restrict Soviet access to United States-origin oil and gas equipment and related technology and thereby convey our opposition to Soviet actions that are damaging to United States foreign policy.

The controls have provided a flexible foreign policy tool that the United States has used to demonstrate its opposition to certain actions taken by Russia, such as its role in Poland's repression. Modifications of these controls serve as a useful foreign policy tool to respond to significant changes in Soviet internal or foreign policies, toward human rights, Eastern Europe or Afghanistan. These controls were tightened in 1980 in response to the Soviet invasion of Afghanistan.

In the annual review of foreign policy controls in January 1986 we took into account a modest, but encouraging development in Soviet human rights policy and made a modest change in U.S. policy on the export of oil and gas technology. Applications for the export of technical data for oil and gas exploration and production

are now reviewed on a case-by-case basis. Previously, all related technical data export license applications were denied.

Question 2. Why has the administration singled out the petroleum equipment and services industry for sending "signals" of U.S. displeasure to the Soviet Union. Is it not true that many of these items are freely available from other countries? Is it not true that since these controls were imposed many foreign sources have been developed, presenting U.S. companies with stiff competition both in the U.S.S.R. and in third country markets when in many cases there had been no foreign competition previously? The agricultural embargo was finally ended in the face of widespread foreign availability. Why have these restrictions been maintained under similar circumstances?

Answer 2. It is true that foreign availability exists for the majority of petroleum equipment items subject to foreign policy export controls to the U.S.S.R., Afghanistan, and the four embargoed countries of Cuba, North Korea, Vietnam, and Cambodia. The status of the worldwide availability of petroleum equipment was reviewed and reflected in the Annual Report of Foreign Policy Controls submitted to Congress in January. Nevertheless, the control does restrict access to United States technology desired by the Soviets and the administration does not feel a change to the control beyond what has already been provided is appropriate at this time. The flexibility it gives us to respond to changes in Soviet internal or foreign policies is still considered a valuable political tool for our future dealings with that country.

Question 3. The administration has made a number of high-level pronouncements over the last year or so indicating that it wished to improve trade ties between the United States and the U.S.S.R. in non-strategic items. Secretary Baldrige, you even accompanied hundreds of American businessmen to Moscow in December for a meeting of the U.S.-U.S.S.R. Trade and Economic Council. If the administration is serious about encouraging peaceful, non-strategic trade with the Soviets, why has it chosen to maintain a key impediment in one of the most promising areas for mutually beneficial trade—namely, the oil and gas sector?

Answer 3. First, let me say that we are serious about expanding trade in peaceful nonstrategic areas and we discussed 33 specific projects with the Soviets where we believe an expansion of nonstrategic trade would be beneficial to both countries. The U.S.-U.S.S.R. Trade and Economic Council meetings were, I believe, successful from the viewpoint of both countries.

In the oil and gas sector the administration's policy is to review proposed exports of oil and gas equipment to the U.S.S.R. with a presumption of approval. In 1985 the Commerce Department approved 57 export licenses to the U.S.S.R. for oil and gas equipment valued at $76 million. When we decided to continue the foreign policy controls on oil and gas equipment to the U.S.S.R., the administration did take into consideration the consistency of this action with our proposals to expand nonstrategic trade with the Soviets. It was decided that the modest change in our policy on oil and gas technology would signal our willingness to respond to positive Soviet initiatives.

COMMUNIST ANGOLAN GOVERNMENT

Senator PROXMIRE. Thank you, Mr. Chairman.

Mr. Secretary, can you tell us why the administration refuses to label the present Government of Angola as Communist despite the fact that it is kept in power by Cuban and Soviet troops?

Does it make sense, in your view, to provide funds to Jonas Savimbi and other Marxists, which the President has indicated we are going to do through the CIA overtly in efforts to overthrow that Government while at the same time giving taxpayer money to a regime we are trying to topple?

Secretary BALDRIGE. Well, I think it depends on the assessment of the State Department, Senator, on what we are going to lump—what countries we are going to lump in, let's say, the Communist fold.

There are countries around the world, as you know, that have various Socialist and Marxist-Leninist leanings, supplied or helped in part by the Soviet Union. I think the exact category in which any one of those countries is put as far as how much threat they

pose to U.S. interests in the area is a very complicated call, obviously. I have no reason to argue with the State Department on that particular call.

Senator PROXMIRE. It is beyond my understanding how a country could be more Communist than Angola is now. Angola, as we say, not only has a Marxist-Leninist dictator in control, no elections, it is completely attuned to the Soviet Union, it votes lockstep with the Soviet Union at the United Nations, it is protected by Cuban troops, it is strengthened by an overwhelming amount of Soviet military force.

And if we take the position that it is not Communist, then it is hard for me to understand why we should covertly give aid to a revolutionary group trying to overthrow it when that raises the level of violence, death, and destruction.

And of course, one of the aims and goals of the Savimbi group, as they have indicated, is to destroy the oilfields that are financed in part by the Export-Import Bank and that of course were developed there by an American company.

You can understand why it is such a dilemma for us in the Congress to understand this.

Secretary BALDRIGE. Well, I understand your dilemma, Senator. It is not the portfolio of the Commerce Department. And I really——

Senator PROXMIRE. I understand that. And I—you're right. In that sense, the implications of the question may be unfair. I didn't mean you are responsible for this. But as a member of the Cabinet, as a member of the administration, it would be helpful if you would give us some insight as to what they're thinking about. As a matter of fact, sitting in the same chair you are sitting in, the head of the Export-Import Bank, Mr. Draper, when I asked him why they made the loan to the Angolan Government, said we had no choice. He said we had no choice, because Angola is not considered a Communist country. We had to give it.

It just seems to me to be an extraordinarily difficult situation for the American people to understand and for this Senator to understand.

Let me ask you this. In June 1985, when Congress was in the final steps of renewing and amending the Export Administration Act, Secretary of State Shultz wrote to the conferees on behalf of the administration requesting that Congress not require the President to certify that Iraq does not support terrorism, or else put Iraq back on the list of terrorist-supporting countries.

In that letter, Secretary Shultz said, and I quote:

> I assure you that should we conclude that any group based in or supported by Iraq is engaged in terrorist acts, we could promptly return Iraq to the list of countries identified as supporting terrorism.

PUNISH TERRORIST COUNTRIES

I understand that Iraq furnished Mr. Mohammad Abbas with a diplomatic passport that aided considerably in his leading the *Achille Lauro* hijacking and murder of Leon Klinghoffer. Why did this administration refuse to return Iraq to the list of countries aiding terrorism, when we have that clear overt incident?

Secretary BALDRIGE. I am not sure that that has been proven, that particular charge has been proven. We have also seen some changes over the past few years in Iraq's attitude toward the whole subject of terrorism. So as of now, we are not changing the administration's position.

Senator PROXMIRE. If it were proven that he did have that assistance from Iraq, that they did provide him a diplomatic passport, would you place Iraq back on the list?

Secretary BALDRIGE. I don't think I can give a simple answer to that question, Senator. As I said before, I am not the Secretary of State. I am not privy to all of the CIA intelligence, all the other things that go into making decisions. I don't think it is a simple yes-no. I wish it was. I simply can't answer more than that.

Senator PROXMIRE. Let me just try once more in a related area. In that same June 1985 letter from Secretary Shultz on behalf of the administration, the Secretary said, and I quote:

> I assure you that I share your concern that U.S. aircraft exports to Iraq are consistent with our foreign policy objectives, particularly our efforts against those states which support terrorism.

As you know, Iraq has contracted to buy 45 helicopters that could be used for military purposes. Do you think we should license that sale to Iraq, in view of its role in the *Achille Lauro* hijacking?

Secretary BALDRIGE. Let me again point out that I do not believe that has been proven, that particular charge; however, now we are getting onto ground that is in our portfolio—foreign availability—when you bring up the helicopter situation around the world. As far as Iraqi potential sources for buying helicopters, there are 39 alternate helicopter sources the Iraqis could go to, helicopters manufactured for civil and commercial use are manufactured in 23 countries. There are 19 helicopter manufacturers who make the kinds of helicopters that also blend over into military use. There are three of those that make helicopters, military helicopters, that are most comparable—they may not be exactly similar, but they will get the job done for what the Iraqis want.

So we are accomplishing nothing, from a commercial point of view, in shutting off U.S. helicopter sales. The Iraqis can get those helicopters from a great many places around the world.

Senator PROXMIRE. I disagree with that, and let me say why. The reason they are buying our helicopters, obviously, is because they are cheaper or better. Therefore, we are giving them a cheaper or better break than they can get elsewhere. It may be true that if they don't buy them from us, they will buy them elsewhere. But they must be getting a better deal from us. So we give them the deal that does benefit a country that is using the helicopters, has used the helicopters in what appears to be a military way to support terrorism.

Last June, Mr. Lionel Olmer, your Undersecretary for International Trade, prepared an end of tour report in which he pointed out, I quote:

> About one-third of U.S. exports go to LDC's, many of which have significant external debt problems. The severe cuts in their imports required to save foreign exchange for servicing their debts has been a sharp blow to U.S. export performance since 1981.

Part Two: Soviet Union Oil/Gas

A. Purpose

The purpose of these controls is to provide a mechanism whereby the U.S. government can, when necessary and appropriate, restrict Soviet access to U.S.-origin oil and gas equipment and related technology and thereby convey our opposition to Soviet actions that are damaging to U.S. foreign policy interests.

B. Department of Commerce considerations with respect to the criteria in Section 6(b) of the Act:

1. Probability of Achieving Intended Purposes

The controls have provided a flexible foreign policy tool that has been used, such as during the Soviet role in the repression in Poland, to demonstrate the opposition of the United States. Modifications of these controls have served as a useful foreign policy tool to respond to significant changes in Soviet internal or foreign policies, specifically Soviet policies toward human rights, Eastern Europe or Afghanistan. These controls were tightened in 1980 in response to the Soviet invasion of Afghanistan.

2. Compatibility with Foreign Policy Objectives

These controls, which have been used to convey U.S. opposition to specific Soviet actions, are compatible with U.S. efforts to deter Soviet actions adverse to U.S. foreign policy objectives. The extension of these controls at this time is compatible with U.S. policies toward Soviet action regarding human rights and Afghanistan.

3. Reaction of Other Countries

We have approached other allied governments and urged them to take parallel action. No other government has yet taken measures to control the sale of nonstrategic oil and gas equipment to the Soviet Union.

4. Economic Impact

As a result of the controls, the market share and sales by U.S. petroleum machinery and equipment suppliers in the Soviet Union have declined dramatically. The share of Soviet orders for Western oil and gas equipment and technology held by U.S. companies fell from about 25 percent for the four years prior to imposition of the controls to under 2 percent in 1979-1984 and approximately 10 percent in 1985 (not including pipelayers, which were removed from control in 1983). In the seven years since imposition of the controls, U.S. companies received about $170 million in orders, in contrast to some $2 billion they would have won had they been able to maintain their previous market share. It would be inaccurate, however, to attribute the total share lost to the existence of the controls. The strong U.S. dollar and other competitive factors no doubt account for some of the loss.

U.S. equipment suppliers report that there have been many instances in which the controls have directly prohibited or delayed exports to the Soviet Union. More significantly, Soviet purchasers have questioned the reliability of U.S. firms as suppliers, in some cases not providing U.S. firms the opportunity even to bid on projects. U.S. companies have been urged at times to quote deliveries from non-U.S. production facilities. Despite the resumption of processing of export license applications after an eleven-month halt in 1981-1982, Soviet buyers have continued to direct contracts to non-U.S. suppliers.

It is likely that the controls have hindered business by U.S. petroleum equipment suppliers in markets beyond the Soviet Union by raising questions about the reputation for supplier reliability of U.S. petroleum equipment manufacturers. Potential customers may have hesitated in some instances to buy directly from U.S. suppliers, and international contractors may have hesitated to include U.S. suppliers in their bids in the Soviet Union and other markets. Loss of business in the Soviet Union results in loss of derivative benefits for U.S. companies, which include enhanced profits, utilization of manufacturing capacity, and economy of scale; new technical experience growing out of development and application of products in Soviet conditions; and development of relationships with other Western companies which can be used in winning business outside the Soviet Union.

The petroleum equipment industry is particularly sensitive to loss of sales abroad since it depends on exports for about one-third of total sales. Loss of export business affects in turn suppliers of this industry and the U.S. economy. The U.S. petroleum equipment industry faces weak domestic demand in the currently depressed U.S. energy market.

Despite the controls on oil and gas equipment license applications valued at $76.2 million dollars were approved in 1985.

5. Enforcement

Few problems have been encountered in enforcing these controls.

6. Consequences of Modifying Controls

Export controls on oil and gas equipment were originally imposed in response to Soviet human rights violations and modified in response to the Soviet invasion of Afghanistan. Modifications of these controls at this time would not be appropriate.

C. Alternative Means

Other means, including direct negotiations, are usefully supplemented by these controls.

D. Foreign Availability

In June of 1984, the Commerce Department completed an analysis of the foreign availability of oil and gas technical data and equipment presently under export control to the Soviet Union. The report concluded that foreign availability does exist for the majority of these items. In the oil and gas equipment area, there are approximately 350 major U.S. and well over 600 major foreign firms producing this type of equipment. The United States is no longer the sole supplier of most types of oil and gas equipment. Nonetheless, the goal of restricting access to U.S.-origin oil and gas equipment is met.

When the foreign policy control was imposed, the U.S. approached other allied governments to gain cooperation. No other government has taken similar measures to control the sale of oil and gas equipment to the Soviet Union.

VIII. South Africa [1/]

The Congress is notified that export controls in South Africa continue in force pursuant to Executive Order No. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) and section 6(n) of the Export Administration Act of 1979, as amended.

IX. Nuclear Non-Proliferation Controls

Section 17(d) of the Act and Section 309(c) of the Nuclear Non-Proliferation Act of 1978 (Public Law 95-242 of March 10, 1980) are interpreted as intending that:

A. Nuclear non-proliferation controls do not expire annually and determinations to extend them are thus not required; and

B. The criteria and other factors set forth in sections 6(b-f) of the Act are not applicable to these controls.

The Congress is therefore notified that these controls continue in form. These controls further significantly the nuclear non-proliferation foreign policy of the United States and its declared international obligations. U.S. policy in this area has increased the difficulty of nations attempting to acquire sensitive nuclear technology or equipment.

The United States has held extensive discussions with other states to coordinate export controls for nuclear non-proliferation purposes and have received significant assistance from other states in reducing available foreign sources.

1/ Since these controls are imposed pursuant to the Export Administration Act of 1985 and Executive Order No. 12532, they do not require extension at this time. See Enclosure I, section VIII.

ENCLOSURE 3

Discussion of Public Comments on
Foreign Policy Export Controls

In the Federal Register of October 21, 1985 (50 FR 42568) the public was invited to submit comments on foreign policy controls, especially in regard to the criteria established in Section 6 of the Export Administration Act of 1979, as amended. The nine responses are available for public examination. They have been carefully considered and taken into account in the analyses and decisions leading to extension of these controls.

Five of the comments were from companies, one from an attorney, and three from community or trade organizations concerned with adverse effects on employees and communities.

Three of the respondents criticized the general ineffectiveness of foreign policy controls in achieving their goals particularly in light of the availability of products from foreign sources similar to those subject to control. One of the respondents cited the stronger criteria for imposing foreign policy controls in the Export Administration Amendments Act of 1985 as evidence of the growing unwillingness to accept controls where the economic costs exceeded the foreign policy benefits. All three respondents cited specific cases in which foreign policy controls have resulted in significant losses of sales and damaged the international reputation of U.S. businesses as reliable suppliers. One respondent stated that "the moral and political strength of the U.S. would be enhanced by the removal of all unilateral foreign policy based export controls" because U.S. industries unequally and unfairly bear the costs of these controls. Another respondent noted her company has lost over $250,000 in sales due to foreign policy controls and estimated that Fortune 500 companies have lost "between $70 and $100 million in sales due to foreign policy controls."

All three respondents argued that foreign policy controls unjustifiably increase the problems faced by U.S. companies in the international market at a time of a growing trade imbalance.

Another respondent discussed enforcement problems faced by his company, and argued that a seizure of over $200,000 in exports to the Soviet Union may result in potentially disastrous losses to the company. This comment did not specifically address foreign policy controls, and is being reviewed carefully elsewhere in the Department.

Specific Controls

Iran

One respondent argued that foreign policy controls on exports of civilian aircraft parts and equipment, especially to Iran, have resulted in considerable losses to his company. The company has not aggressively expanded certain overseas markets, particularly those in Iran, because of fear of violating U.S. export laws. The ambiguities in regulations concerning which aircraft parts are subject to foreign policy controls, and the fear the company will be liable if items are diverted to unauthorized uses, have resulted in the company forgoing all sales to Iran and some potentially new customers in other countries. The company also cited licensing delays as a cause of lost sales. Lastly, the respondent noted that the need to request end-use verification from buyers in certain countries has damaged the reputation of his company and resulted in the loss of business to foreign competitors who face little or no documentation requirements. The company noted that all business lost due to these factors had gone to foreign sources.

Libya

One respondent recommended that Export Administration Regulations regarding exports to Libya of aircraft and related parts be amended to reflect actual licensing policy. Although the regulations state that these items will be generally approved for export to civil uses in Libya, the actual licensing policy, which is stated in the annual report to Congress on foreign policy controls, is to deny all exports of aircraft and related parts to Libya. The respondent requested that the regulations be amended consistent with this stated policy so businesses will not assume their license may be approved, and unnecessarily incur significant expenses in soliciting sales, negotiating orders, or preparing license applications.

Soviet Union

Five of the comments received pertained to foreign policy controls on exports of oil and gas equipment to the Soviet Union. The commenters were highly critical of these controls, and all indicated that on the basis of the criteria for extension of these controls outlined in Section 6(b) of the Act there is not justification for continuing the foreign policy export controls on oil and gas equipment. They therefore recommended the Administration take no action to extend these controls. A summary of their comments on these controls follows:

First, the commenters stated that in light of the availability from foreign sources of oil and gas equipment, the control program fails to achieve its intended purpose. Three of the comments contained detailed analyses of the foreign availability of specific equipment subject to the controls. On the basis of these analyses, one commenter concluded that it is difficult to find items currently under control that do not face foreign competition at roughly comparable levels of technology: "there are very few instances in which technological alternatives cannot be found; 'second best' solutions may entail some costs and delays, but major Soviet energy projects will move forward with or without U.S. participation."

One firm argued that if the purpose of the control was to deny the Soviets equipment needed by their oil and gas industry, the controls have clearly not met this objective because of foreign availability. In an exhaustive critique of the controls, one industry association argued that because the Soviets are able to meet their equipment needs from non-U.S. sources or indigenous production, the controls impose very few costs on the Soviet Union and are therefore ineffective in influencing Soviet human rights or foreign policy. Moreover, the association argued, the controls are ineffective in signalling U.S. opposition to Soviet actions because due to alternative suppliers of oil and gas equipment, the controls no longer cause the Soviet Union to "pay a price" for its behavior.

Second, all commenters noted that the continuation of these controls would not be compatible with overall U.S. policy toward the Soviet Union, and thus not consistent with the requirements for foreign policy controls listed in Section 6(b). The commenters noted that the Administration has recently emphasized the importance of trade in nonstrategic goods and services for a more stable and constructive relationship with the Soviet Union. One commenter noted that "if the Administration is serious about stimulating peaceful, nonstrategic trade between the U.S. States and Soviet Union, then it should devote close attention to existing obstacles in one of the most promising areas for U.S. sales to the Soviet Union--namely, oil and gas equipment and technology."

Third, one commenter noted that the President is required to determine that the reaction of other countries to the imposition or extension of foreign policy controls does not render the controls ineffective. The commenter argued that because U.S. negotiators failed to persuade other supplier nations to restrict their exports of oil and gas equipment to the Soviet Union this determination cannot be met.

Fourth, all the commenters emphasized the economic costs of the controls, and argued that these costs far exceeded the marginal foreign policy benefits of the control program. In assessing the economic impact of the controls, respondents focused on the direct loss to U.S. business in sales to the Soviet Union, and on the impacts of the controls on the international position of the United States in the oil and gas equipment industry.

Three commenters noted that since the controls were imposed, U.S. exports of oil and gas equipment to the Soviet Union have dropped dramatically. They note that foreign suppliers have quickly replaced U.S. business shares in the Soviet market, and quote Commerce Department figures that the controls have cost U.S. firms potential sales of $2 billion since they were imposed in 1978. "By way of illustration," one commenter noted, "in 1975, the U.S. was the leading foreign supplier to the Soviet Union of machinery for oil and gas drilling, production and processing. By 1983, the U.S. foreign market share in the Soviet Union had dropped to less than 4 percent, whereas the Germans, Italians, French, British and Japanese held a combined share of over 70 percent of the nearly $1.7 billion worth of oil and gas equipment purchased by the Soviets from foreign sources." An industry association notes that U.S. firms are considered the "supplier of last resort" because the Soviets are determined to avow or lessen the impact of any future U.S. oil and gas sanctions, by using non-U.S. suppliers wherever possible. The association argues that notwithstanding the current licensing policy of approval for a broad range of equipment falling under the oil and gas controls, the Soviet fear that this policy could be changed, and contracts with U.S. suppliers affected. Further, the association argues that the license process itself creates uncertainties above the transaction that the Soviets do not face from foreign suppliers.

In addition to affecting the reputation of the U.S. companies as reliable suppliers, commenters argued that the controls damaged the international position of the U.S. petroleum equipment and services industry.

WRITEDOWN ON LDC LOANS

Some economists contend that there is necessarily a conflict between our export community and our banking community over how to deal with the deficit problem, because the exporters, they claim, would like more of the debt to be written off, so the debtor countries could expand and buy their goods, while the banks don't want to take any losses on these loans.

Have you seen this conflict in our export and banking communities? And would you comment on the validity of this charge?

Secretary BALDRIGE. Well, the problem of the development countries restricting their imports because of need—I mean, they just simply can't afford it. As I said earlier, that has accounted for a swing of about $22 billion in our trade deficit. The problem is not only the well-known crises, debt crises at the very top that has been addressed by international means—I guess mostly in the headlines. It is the drying up of trade credits at the bottom that worries me the most. The mundane 90-day, 120-day kinds of credit that are necessary to finance people selling to developing countries.

As you know, the commercial banks are in a difficult spot here, because, under the present—I am oversimplifying, of course, but under the present rules, they can't write off the loan in 10 years like a manufacturing company can. They can write it off, take 10 percent a year for 10 years. If they fix it up, fine. If they don't, they can continue to write it off.

A bank, once they start to do that, runs into nonperforming loans and has to take the whole hit at once. Obviously, they don't want to do that. I think that conflict is there to some extent, obviously.

Senator PROXMIRE. Do you think we can reconcile it by permitting banks to write off the loans over a longer period?

Secretary BALDRIGE. If you are asking me this as an individual and not as an administration official—if you will allow me that. As an individual, I don't see why not, because if they come from the industrial sector, we do that all the time, but that is in no way, shape or form, the administration position. I only answered because you asked me that. That's the first one.

But the whole idea of how to get trade credits flowing comes back to one of the best ideas I have heard around the world, is our Secretary of the Treasury's initiative, the Baker one, that was outlined at Seoul, a tripartite agreement. The developing countries, as their part of the bargain, simply have to set up policies that will insure investment coming into their country.

If he just took the investment that has fled most of the investing countries, particularly the major ones, their own money has just gone out of the country. In some cases, as much as we have lent or invested there over a 3-year period. So unless they do their part in providing a stable economic policy platform to attract investment, I don't think the rest of this is going to work. It's not just a conflict between the banks and the exporters, it is the home country desire to depend more on getting equity capital in whatever form, making it safe for equity capital, instead of depending on debt instruments to solve all the problems.

Senator PROXMIRE. Thank you, Mr. Secretary. My time is up. But let me just say that I think you have made a very constructive suggestion, and I think it will be a good one for us to explore in committee with the bank regulators, how we could change that system of accounting. I think all of us are aware, however, of the great difficulty of our banks these days, and none of us wants to see a situation in which our banks become less sound. Chairman Garn, I think, has done an outstanding job of reinforcing that safety and soundness.

Thank you.

The CHAIRMAN. Senator Heinz.

Senator HEINZ. Mr. Chairman, thank you.

Secretary Baldrige, your report indicates a number of places where various foreign policy controls are essentially symbolic, and the discussion of alternatives in your report, it seems to me, doesn't really address the other means of sending symbolic foreign policy symbols.

RESTRICTIONS COST U.S. WORKERS JOBS

Aren't there some other ways of sending those kinds of symbolic symbols that don't cost U.S. workers their jobs and U.S. firms their share of markets overseas?

Secretary BALDRIGE. Trade seems first on everybody's list. As Secretary of Commerce, I obviously feel the way you do. I wish there were a great many other ways to show our displeasure than simply by always turning the trade spigot off, because it doesn't always work.

Senator HEINZ. Anybody who drives out past Massachusetts Avenue and takes a right on 38th Street, or whatever, goes past that huge Soviet Embassy out in Northwest Washington. The Soviets must have two or three times the number of people in this country that we have or are allowed to have in the Soviet Union.

Now why wouldn't an appropriate response deal, for example, with that gross imbalance? That doesn't hurt American exporters. It sends a very direct message to the Soviet Union, which says something is not right with our relations. We don't like your human rights policy. We don't like your invasion of Afghanistan. We don't like what you are doing in Poland.

Why isn't that a way of sending just as strong a message, maybe stronger, which has some substance to it, and which doesn't hurt Americans? And why don't we think up ways of lighting a match in the other guy's shoe, instead of shooting ourselves in the kneecap?

Secretary BALDRIGE. I think this august committee would rather have George Shultz down here this morning than myself. [Laughter.]

Senator HEINZ. Listen, if Jim Baker and Don Regan can switch jobs——

Secretary BALDRIGE. Well, let me say that sometimes actions similar to that are an adequate response and have been taken. I don't think the specific issue—I don't think it is an appropriate time to start the tit for tat movement with the Soviet Union with the kinds of talks we have going on with them.

Senator HEINZ. I want to get to that in a minute. What I think you are saying is that the Commerce Department, unhappily, is really the boot that the leg is using to kick with, and as a result, you feel a little powerless to influence those choices. Somebody else is making those decisions. It is really not you, you are saying, and I am sorry, if that is true. I'm sorry that that's true.

Secretary BALDRIGE. We are involved in every discussion, whether it is NSC or the whole Cabinet or any part thereof that has anything to do with trade and commerce. We have had every chance in the world to argue the pros and cons of sanctions, back in 1981 on up to any of the latest moves. So we get heard. We win sometimes, and we lose sometimes.

Senator HEINZ. Let's get down to cases directly involving your Department. As I think you are well aware, it was the intent of Congress, when we amended the Export Administration Act, that export controls be removed in the cases of foreign availability of goods in such quantity and quality as to render the U.S. controls ineffective, and that any exporter could ask for such a determination. The act states, and I'll quote because I think it is important:

> The Secretary shall make a foreign availability determination on the Secretary's own initiative or upon receipt of an allegation of foreign availability from an export license applicant, that such availability exists.

The regulations issued by the Commerce Department, however, indicate a much narrower interpretation of the law. And let me read them to you. They state:

> An assessment of foreign availability will be initiated only on items in applications that have been denied on national security grounds.

Now what that, of course, does is avoid the decontrol of a category, based on foreign availability.

So my question to you is: Why doesn't this regulation frustrate the law, both the intent and the letter, as passed by Congress and signed by the President? And isn't any company entitled to seek a finding of foreign availability, in order to avoid repeated license applications for goods available overseas?

Secretary BALDRIGE. First, if I could address the approach itself.

We think it is a pragmatic approach by limiting foreign availability studies to those licenses which are denied because we are able then to focus our resources on the cases where foreign availability analysis actually would be a critical factor in issuing the license rather than applying those kind of resources to the cases where foreign availability is claimed but the license is approved.

Senator HEINZ. As I understand your answer, you don't disagree with my interpretation of the law. You are saying it is a question of resources?

Secretary BALDRIGE. No; well, yes, if you want to put it that way.

Senator HEINZ. That is the way you put it.

Secretary BALDRIGE. The only problem there is the time.

Senator HEINZ. You know, Mr. Secretary, I have an enormous amount of respect for you, but what you are saying is, yes, Senator, I agree that is what the law says; we are not executing it because we don't have the resources to execute it the way Congress intended. That is what you are saying.

Tell me I am wrong.

Secretary BALDRIGE. I don't remember telling you you were wrong ever, Senator. [Laughter.]

This is a question of resources. It is simply that we want to put enough resources in to have foreign availability be effective.

Senator HEINZ. Mr. Secretary, I appreciate your candor. You have answered my question. You have answered it honestly and clearly, and I thank you.

Let me continue on in another area. Let's talk about oil and gas equipment, and I know you are sympathetic to the problems there.

How does the administration justify renewing for another year the foreign policy control on exports to the Soviet Union of oil and gas equipment and technology, especially in light of the broad recognition within the administration that there is widespread foreign availability and that the control has caused substantial damage to the United States petroleum equipment and services industry?

CASE-BY-CASE STUDY

Secretary BALDRIGE. We felt as an administration that, after reviewing the steps forward that the Soviets have taken in their relations with us lately, although those steps were modest steps and they were good beginning steps, we felt that the proper answer was to go from a presumption of denial on the oil and gas controls that you mentioned to a case-by-case review, where we can be more flexible. If the situation between our countries continues to improve and we see some steps, more additional specific steps toward immigration and human rights and things of that nature in the Soviet Union, we will be able to answer because we will be reviewing these on a case-by-case basis.

In effect, you could say that move on our part is partway or halfway or however you want to describe it toward the point that you are bringing up, complete elimination of unilateral controls on oil and gas supplies.

Senator HEINZ. Well, as I understand it, with respect to goods, you were on a case-by-case system and you are now on a case-by-case system; nothing has changed.

Secretary BALDRIGE. Yes. It is the technology that has changed, not the equipment, the transfer of the technology.

Senator HEINZ. Getting on to cases, what is the rationale for removing export restrictions on pipe-laying tractors while leaving them on for exploration and production equipment?

Secretary BALDRIGE. We have always had a difference since the Carter years on exploration and production as compared to transmission and refining and, let's say, the shipping of gas or oil. Pipelayers come under the latter; they don't come under the former that we are most concerned with.

Senator HEINZ. Pipelayers were embargoed under the Reagan administration Yamal Pipeline controls.

Secretary BALDRIGE. Also, the embargo was taken off in the Reagan administration in 1983 because the pipelayers are not involved in the production or exploration. They are involved in transportation, which was generally not covered by the control, and they were still sticking out like a sore thumb. We should have done that earlier, in my opinion.

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But now I think the problem that you are talking about, Senator, is on production and exploration equipment. That goes with the presumption that the technology up until this time has had a presumption of denial. Now we are able to review the technology that goes with it, review it on a case-by-case basis.

For example, we can sell drilling rigs to the Soviet Union, have been able to for some time, but we can't send a crew over to show them how to put them up, and our competitors around the world sell them drilling rigs and also send people over to show them how to put up the rig.

We can sell them the goods itself, drilling mud, but because of the technology of how you mix the mud together, depending on the application and the percentage you use, that comes under technology. That has been denied. That is the kind of boxes you get into in that area.

Senator HEINZ. You are saying that the product can't be sold?

Secretary BALDRIGE. Yes, it can.

Senator HEINZ. But without restricting technology? You are not saying that?

Secretary BALDRIGE. No; I am saying the product can be sold. It has to have a license. But there had a presumption of approval. But the technology with it we have not been able to sell because it had a presumption of denial.

Senator HEINZ. Can I read you your own Department's assessment of foreign availability for oil and gas products?

Secretary BALDRIGE. I am sure it will be clear as a bell. [Laughter.]

Senator HEINZ. It is clear, and it is compelling.

It says:

> Foreign availability does exist for the majority of these items in the oil and gas equipment area. There are approximately 350 major U.S. firms and well over 600 major foreign firms producing this type of equipment. The United States is no longer the sole supplier of most types of oil and gas equipment.

Secretary BALDRIGE. Yes, sir; that is correct, and clearly we cannot look on this decision as a purely commercial decision.

Senator HEINZ. You are saying it is still a foreign policy decision, and there is a point we are trying to make here on our foreign policy.

Now, let's look at the foreign policy implication. These controls were originally imposed by the Carter administration in 1978, as I recall, for the trial and conviction of two Soviet dissidents, Alexander Ginsburg and Anatoly Shcharansky, plus the fact that they arrested an American journalist named Jay Profett. That is why we imposed those controls.

Since then, Mr. Ginsburg was freed and just recently Anatoly Shcharansky was freed. At no time has anybody, either the Carter administration on whose watch Ginsburg was freed, in this administration or the previous one linked their being freed to the foreign policy controls that we still maintain.

So if there is no linkage, why are we continuing to impose the controls? Isn't that putting so-called foreign policy controls on without a policy?

Secretary BALDRIGE. Of course, in this case it is whether to remove them or not.

Senator HEINZ. Well, maintaining foreign policy controls without a policy?

AREA OF HUMAN RIGHTS

Secretary BALDRIGE. I think the answer, Senator, would have to be that the reason behind those controls was more than just two individuals. It is going to be more than that. It is going to be the whole area of human rights and emigration.

We saw some movement, yes. A good step was taken with Shcharansky's release. We took our step. We said instead of denial we will look at them on a case-by-case basis. It is too early to say how that case-by-case basis study will come out. It may be that—it is considerably loosened. I can't say now, but I can't prejudge in effect what our response will be until you see the actual decisions on a case-by-case basis.

We may not agree that the movement has been enough, but there has been movement as a result of Shcharansky.

Senator HEINZ. What I am driving at is that once a U.S. foreign policy control has been tied to progress on human rights who in the administration, where in the administration is the determination made that enough progress has been made to justify dropping the controls?

Secretary BALDRIGE. That is an interagency group that recommended this particular decision we took to the Cabinet, and they were backed up.

Senator HEINZ. I have one last question, Mr. Chairman, and I thank you for the courtesy of giving us this time.

Since the adoption of the Export Administration Act last year, the President has not imposed any new foreign policy export controls, which I suppose is good news. On the other hand, he has imposed, as you know, several controls under the provisions of IEEPA, the International Economic Emergency Powers Act.

Commerce is tasked with the administration of the Export Administration Act, but Treasury is tasked with the administration of IEEPA.

At least in the first instance, are you concerned that the increasing resort to the use of IEEPA is cutting Commerce out of export control decisionmaking, particularly as it affects foreign policy?

Secretary BALDRIGE. No; I am really not, Senator, not at all. It doesn't work that way in practice. IEEPA and the EAA are both tools that we can use.

Now, there is some concern that we may be using IEEPA to get away from contract sanctity provisions. That is really not true. We can do some things under IEEPA that we can't do under the EAA.

In a case like South Africa and Libya we take some steps that you could not take under the Export Administration Act, but I have no problems with the fact that another agency happens to administer IEEPA. We are fully consulted. The essential core of policy is something that we all participate in.

Senator HEINZ. How would you compare the relative ability of the Commerce Department, as opposed to the Treasury Department, to obtain the candid views of businesses on potential export controls if they are used under IEEPA?

Secretary BALDRIGE. I don't think it would be so simple as just having Treasury views and not Commerce. We work together on them.

Senator HEINZ. Very well. Thank you very much, Secretary Baldrige, Mr. Chairman.

S. 812 DISCRETIONARY AUTHORITY

The CHAIRMAN. Along the same line, Mr. Secretary, as I mentioned in my opening statement, Senator Proxmire and I have cosponsored a bill to give the President discretionary, not mandatory, control over bank loans to certain countries. The administration has opposed that.

I have a hard time understanding that opposition. If we were trying to say the administration must use these controls, that is something else. But giving the President discretion to do so is being refused, even though you have once again said you can do certain things under IEEPA that you can't do under EAA.

Now, I cannot, in my own mind, justify the bending of IEEPA to say that there is a national emergency either in the case of Libya or South Africa.

When Mr. Mulford, Assistant Secretary of the Treasury, testified in answer to that question, he had to admit there was no national emergency in either case.

Do you think there was a national emergency with either South Africa or Libya?

Secretary BALDRIGE. Well, obviously, it depends on your definition of national emergency. What we were involved in in the case of Libya was a dictator who said that he was going to take vengeance on American lives in the streets of our own country.

Now, whether you call that an emergency or not, I suppose there can be different opinions on, but it looked to us that we should act in the face of that and some other things going on in Libya.

And the definition of what you call emergency I think is arguable, but I simply personally thought that that was a very, very serious situation for a foreign dictator to talk about taking American lives in our streets.

The question of South Africa, we had had—when I say we, some people in the administration—had had what they considered a good meeting in Vienna with the Prime Minister of South Africa. They left there feeling encouraged. Then he gave his well-known speech—at least back in his own country—that we felt brought things to a head, and we felt constrained to call it an emergency.

Now, again there is a divergence of opinion on that, but there were circumstances in both those situations that were very, very serious. I don't know just where you draw the line as to who calls it an emergency except we have given that authority to the President. He felt it was.

The CHAIRMAN. I don't think you can possibly stretch in the minds of most people what a national emergency is to include even the Libyan situation. Certainly there was no threat from South Africa to the national security of this country. Even though there may have been a threat to certain individuals, Qadhafi is not a threat to this country.

The thing that bothers me is the fact that, the admistration felt there was action necessary to be taken in both cases. I can't necessarily fault that, but then you find you have no authority to take action without declaring a national emergency.

Then you have to really bend and stretch the definition of a national emergency to handle both cases. That is exactly why we propose the legislation we do, to give the President in nonemergency situations that authority, and the administration turned us down. They said they don't want that kind of discretion.

I have a hard time understanding that turndown, when everybody feels uncomfortable in declaring a national emergency. You did very well trying to massage the definition. Mr. Mulford couldn't. He just had to come out and say, no, there was no national emergency.

So on the one hand the administration is uncomfortable using IEEPA. On the other, we are trying to give them something to fit a situation where there isn't a national emergency and everybody knows there is not, and the administration says they don't want that authority. I don't understand that kind of logic: Why do they oppose a bill that is intended to give this administration, or any other, a discretionary power to fit situations that come up all the time?

There are very few national emergencies which are really legitimately defined as such under IEEPA. This would seem to indicate that this gap is a threat to the United States. So I am puzzled.

I don't expect you to be able to answer on behalf of the administration because they are obviously uncomfortable with their answer, too.

Secretary BALDRIGE. Well, you are talking about S. 812?

The CHAIRMAN. I am talking in this case even more narrowly than what you and I are talking about. We are talking about only bank loans. That is what we did in South Africa. We imposed controls on bank loans to South Africa; the Libyan situation is much broader than what Senator Proxmire and I are talking about in my bill.

Secretary BALDRIGE. I don't want to leave with the thought that I either don't want to or can't answer that question. I will be glad to answer that question, Senator. You may not agree with the answer, but I will give you as frank an answer as I can.

As I see it, your question about S. 812 comes in two parts: one, the overall denial of bank credit, and, second, well, in the case where it isn't why not make it discretionary so we don't have to use it.

U.S. SHARE IS ONLY 1 PERCENT

In view of the first part of that, the fact is that United States banks hold about 1 percent of the BIS reporting bank loans that have been extended to the Soviet Union and 4.5 percent for the Eastern bloc.

Our allies hold 99 percent of the paper. They have said time and time again that they are not going to restrict their private lending. It is their banks that do 99 percent of the private loans to the

Soviet Union. We have about 4.5 percent of the loans out to Eastern Europe.

And take a run at it another way, 4.5 percent is a drop in the bucket as far as the ability of the German and French banks, for example, to expand and cover that, and they have said they would if we dropped out.

So regardless of the philosophy, it is the practical effects of it that seem very difficult to show that we are hurting them in any way.

On top of that, agricultural trade as well as other kinds will be pretty nearly wiped out because they just won't do that kind of lending.

So I take that as one part of the answer. The other part, you say, well, it should be discretionary. If it was discretionary, then you can pick and choose, and so forth, and you wouldn't have to use that. It would send a message, I guess.

Well, we would have trouble, as you know, with sending that kind of a message now, Senator. We are trying to advance in our relations on all the fronts we can with the U.S.S.R.—arms control, cultural exchanges, trade exchanges. None of those are as important as arms control, but the others can help lead the way.

If we in effect went after them with this, even on a discretionary basis, what kind of a message are we sending? Right now I suppose that is one of the chief concerns of the administration.

The other thing that would be a concern to the administration is that we have been trying to follow a policy of differentiation toward the Eastern bloc countries, where the countries who cooperate more with us and show more independence from the Soviets can look to at least some difference in our attitude toward them and the hard line Eastern bloc countries, and this would wipe out the differentiation.

And I understand that there is obviously a real difference of opinion on this, but I have tried to explain at least our point of view.

The CHAIRMAN. Well, once again you are asked to be Secretary of State. I do disagree with your position because I think the importance of the bill and the signal that it would send are so overstated by the administration that I would be embarrassed to make those arguments. On the other hand, I would also be embarrassed, if I were the administration, when forced into using IEEPA. Using IEEPA forces one to be dishonest and declare a national emergency in those situations.

If I were President, I would want some standby authority to use in these situations. It doesn't send any message to anybody unless it is used. It only gives standby authority.

I think this is an incredibly important point: the administration is saying we don't even want to think about possibly using standby authority, but we will sure as hell bend IEEPA every time we think we need to and declare a national emergency which doesn't exist.

You are correct on the bank loan figures, which is something this committee does know about; as the Banking, Housing, and Urban Affairs Committee. The practical effects are certainly there. When you discuss foreign availability, in terms of products, maybe

we don't sell Caterpillar tractors on the Yamal Pipeline and Japan does. However, with respect to the availability of money, it certainly doesn't hurt our bank, if they don't make those loans and the West European banks do, because there are plenty of places for that money to be loaned. That money is not going to be sitting in bank vaults waiting to be borrowed. There are a lot of American citizens who would like to borrow money at the favorable interest rates that we give the Soviet bloc, rates that are below market rates in this country.

So, yes, the numbers are there, but the issue isn't foreign availability. Every bank in this country will loan virtually every dime they have available, interestingly enough, at higher rates. That is another thing I have never understood: in our coddling of the Soviet bloc countries, we treat them better than we treat our own citizens and our own businesses with preferential interest rates. If the Soviets want to borrow money from us, fine, but let them pay the market rates like everybody else does.

I appreciate your willingness to be here today. You've got a difficult task, and we thank you very much.

Secretary BALDRIGE. Thank you, Mr. Chairman.

The CHAIRMAN. Excuse me just a moment, Mr. Baldrige. Senator Hecht has come in, and I didn't want to ignore him at the end of the questions.

Senator HECHT. No. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Secretary. We will have some questions from several of our colleagues, who were not able to be here, for your response in writing.

[Response to written questions of Senators D'Amato, Mattingly, and Denton follow:]

SENATOR D'AMATO QUESTIONS FOR SECRETARY BALDRIGE

QUESTION:

1. The Export Administration Act restricts trade with nations which sponsor terrorism. The President recently enforced this legislation fully with respect to Libya. However, Syria and Iran, known supporters of terrorism, continue to enjoy most-favored-nation trading status. Although certain exports to these nations have been restricted, why is it that these nations are allowed to enjoy most-favored-nation status? Do you find this inconsistent?

ANSWER:

Denial of MFN status to countries supporting terrorism will have little economic effect on those countries and will impair our ability to deal with terrorism in the future. We import very little from Syria. Crude oil, on which the tariff for non-MFN countries is only slightly higher than that for countries enjoying MFN status, is the major export to the United States from Iran and was from Libya. We already have extensive authority under the Export Administration Act to limit trade, and the International Security and Development Cooperation Act of 1985 provided the Administration with additional authority to ban imports from terrorist countries. We have done so in the case of Libya, where we believe it will serve our interests and have a significant impact on Libya's ability to support terrorism. Though our total trade embargo makes the question moot, we have not denied MFN status to Libya.

QUESTION:

2. Constituents have complained to me that the process of getting an export license can be too long, in some cases precluding them from effectively competing. This is especially true when two agencies, such as Commerce and DOD have to sign off. Is anything being done to correct this matter?

ANSWER:

We assume you are referring to Free World cases that are the subject of the Administration's Directive to permit DOD review. It is true that these cases require an average of 17 days longer to process than free world cases that are not referred to DOD (21 vs. 38 days).

We are working both internally and with DOD to improve the processing time for these cases. Much of the extra time taken by Commerce is attributable to the nature of DOD's recommendations. We are working closely with them to insure that the DOD positions are specific and contain sufficent rationale to support their proposed action. The reorganization of Export Administration also should improve processing times because the new Office of Export Licensing will be able to concentrate solely on the licensing process and ways to improve its efficiency.

QUESTION:

3. You were recently in the Soviet Union discussing trade policy. Was the subject of forced labor goods ever brought up? If so, what was the Soviet reaction? If we truly enforced the Section 307 of the Smoot-Hawley Act, how do you perceive it would affect U.S.-Soviet trade relations?

ANSWER:

Prior to my trips to Moscow last year, the Secretary of the Treasury made a determination that there was not sufficient evidence to deny entrance to Soviet products on the basis that the products were produced by forced labor. Secretary Regan's determination, announced in January 1985, was made following thorough review of in-depth studies of the issue made by the CIA and the International Trade Commission. The conclusions of both investigations were that many countries make use of prison labor, and that the Soviets use such labor on a particularly large scale. However, the information available did not permit accurate determination of which Soviet products are produced with forced labor and whether they are imported into the United States.

Treasury's determination in January 1985 was final with respect to existing evidence. If new evidence on Soviet products were to be introduced an inquiry could be initiated. Enforcement actions without clear, substantive evidence that specific products of slave labor are actually being imported into the United States could undermine our relations with our Allies as well as the Soviets.

In our discussions with the Soviets in Moscow in May and December of last year, we made it clear that progress in the U.S.-Soviet trade relationship is related to progress in other elements of the bilateral relationship, including human rights. The use of forced labor in the U.S.S.R. is a human rights issue of great concern to the Administration.

SENATOR MATTINGLY QUESTIONS FOR SECRETARY BALDRIGE

QUESTION:

1. Could you please provide the committee with details as to how foreign availability is assessed. I am interested in degree of thoroughness, sources of information, and how long such an assessment usually takes.

ANSWER:

Thoroughness and Sources of Information

From the EAAA of 1985 and the Foreign Availability regulations, a positive foreign availability assessment for national security controlled items must verify that the foreign product:

1. is of non-U.S. origin (and therefore not subject to U.S. export or reexport controls);
2. is of comparable quality;
3. is available in fact to proscribed countries; and
4. is available in sufficient quantity so that U.S. exports will not contribute significantly to the military potential of the Warsaw Pact.

To accomplish this, the Office of Foreign Availability must investigate every possible source of information including intelligence information up to the highest levels of classification. OFA analysts routinely check the following sources for every assessment:

1. individual U.S. companies, Technical Advisory Committees, and industry trade groups;
2. the information resources of government agencies and laboratories;

3. public on-line computer data bases of technical and commercial information;

4. government data bases, including Export Administration's data base of the licensing histories of firms and products and numerous intelligence community data bases;

5. foreign companies either directly by letter or telephone, or through the U.S. Foreign Commercial Service by cable;

6. in-house files on foreign companies and products; and

7. direct company visits, both in the United States and abroad.

Teams of three to four analysts work on each assessment, providing expertise in the technology, intelligence resources, and data base searching. To illustrate the scope of only one aspect of the information-gathering activity, OFA has in FY86 sent over 100 cables to Foreign Commercial Service Posts, and over 500 letters to companies and organizations to request product and marketing information.

How Long Does an Assessment Take?

OFA carries out three types of foreign availability assessments:

1. license approval or decontrol claims;

2. assessments to support interagency/COCOM list review activities; and

3. assessments on proposed national security and foreign policy export controls.

Under the claims procedure, OFA is required to reach a determination within 90 days if the claim is certified by a TAC, and has set itself an equivalent deadline for all other assessments. The time required to assess foreign availability depends on a number of factors, including how much initial information on foreign products is included in the claim, the number of foreign companies that reportedly manufacture

"comparable" products, and how long it takes the Foreign Commercial Service to respond to cable requests. OFA is committed to complete its research quickly to meet tight deadlines for every assessment.

Often the actual time it takes to complete an assessment is beyond OFA's control. Once OFA makes a preliminary finding for a national security controlled item, consultations with the Department of Defense are held to ensure the assessment's technical accuracy. Assessments for foreign policy controlled items are similarly reviewed by the State Department. These reviews have in practice taken up to six months. OFA is now requesting the Defense Department to respond within twenty working days to shorten this time period. In assessments for interagency/COCOM list review and proposed controls, the final reports are submitted to the interagency Technical Task Groups (TTGs), which recommend technical negotiating positions for COCOM delegations. Therefore, no interim technical review is required.

Following the technical review for national security controlled items, a policy review by the Departments of Defense and Commerce determines what action is to be taken. The technical and policy review periods add several months to the assessment process.

QUESTION:

2. I am pleased to note that my office is receiving fewer complaints about the length of time it takes to obtain a Commerce Department export license. However, this might be due to the fact that I now am receiving complaints about the timeliness of Defense Department review (in those cases where it is necessary). Has the delay simply been transferred from one agency to another?

ANSWER:

We are pleased that you are receiving fewer complaints on the time it takes to obtain a Commerce export license. However, regarding the timeliness of Defense review, our experience shows that Defense normally meets the statutory time limits in providing licensing recommendations to Commerce. There are some problems regarding the specificity and the rationale of those positions, and we are actively discussing this issue with Defense. We believe that these delays will be minimized in the future.

SENATOR DENTON'S QUESTIONS TO SECRETARY BALDRIGE

1. Question:

Over the past two decades, it has become apparent that international terrorism is a form of low-intensity warfare aimed at the destabilization of the Western industrialized world and an erosion of Western democratic influence.

What is the Department's opinion of S.Con.Res. 94, which contemplates using IEEPA authority to freeze terrorists' assets in the U.S. thereby helping to combat this kind of warfare?

Answer:

The Department of Commerce concurs with the proposed Congressional resolution in declaring its abhorrence to international terrorism. The Export Administration Regulations' foreign policy controls on the export of goods to those nations designated as provoking and/or supporting acts of international terrorism seek to distance the U.S. from such actions.

The International Emergency Economic Powers Act (IEEPA) grants the President authority to invoke certain measures against those nations which unusually or extraordinarily threaten the national security, foreign policy, or economy of the United States.

This authority was invoked January 8, 1986 by the President in issuing Executive Order 12544 blocking all property and interests of the government of Libya. The exercise of such authority is indeed appropriate in instances of terrorist attacks against nationals of the United States.

2. Question:

To what extent would Commerce be involved in any effort to prevent the transfer abroad of these assets -- financial or material?

Answer:

The three points made by this resolution would likely come under the purview of the Department of the Treasury. Treasury's Office of Foreign Asset Control would likely have jurisdiction for implementing any prohibition on the transfer of assets or holdings. For example, Treasury has the responsibility for administering the current prohibition against the transfer of Libyan assets.

The CHAIRMAN. Next we would like to welcome to the witness table Dr. Allan Mendelowitz, Associate Director for International Trade and Finance, General Accounting Office, Mr. Larry L. Hansen, executive vice president for corporate technology of Varian Associates, and Mr. Robert G. Mills, legislative director of the U.S. Defense Committee.

Mr. Mendelowitz, would you like to proceed.

STATEMENT OF ALLAN MENDELOWITZ, ASSOCIATE DIRECTOR FOR INTERNATIONAL TRADE AND FINANCE, GENERAL ACCOUNTING OFFICE

Mr. MENDELOWITZ. Thank you, Mr. Chairman.

With your permission, I would like to read an abbreviated statement and submit the full statement for the record.

The CHAIRMAN. You always have my permission to abbreviate your statements. Those statements will be put in the record.

Mr. MENDELOWITZ. I would also like to recognize, for the record, the principal staff who worked on this assessment. Steve Sternlieb, the project manager, and Jay Fisette, the principal staffer.

At your request, Mr. Chairman, we are here to present our preliminary views on the Secretary of Commerce's January "1986 Report to Congress on the Extension of the Existing Foreign Policy Export Controls." We have also addressed the consultation process used by the Department of Commerce in soliciting business views on the controls extension.

The report to the Congress regarding the imposition, expansion, or extension of controls, have been required since enactment of the Export Administration Act of 1979. This committee in its 1983 report on proposed amendments to the Export Administration Act expressed dissatisfaction with prior export control reports. The committee offered the view that these reports should be comprehensive and detailed and not a paper writing exercise.

Consequently, the Export Administration Amendments Act of 1985 provides that GAO will assess such reports, in order to help assure that the Executive has fully considered all factors required by the act. The reporting process is an incremental one with each year's report using the previous years as a base. For the 1986 report, relevant personnel of Commerce and State were asked to review the 1985 report and indicate what, if any, changes were appropriate for the 1986 report. A cursory comparison of these two reports indicates that much of the language is similar and sometimes identical.

REPORT ADDRESSES EACH SUBJECT AS REQUIRED

Our preliminary analysis indicates that the report addresses each subject required by the act; however, while several sections of the report, particularly the ones on economic impact and foreign availability, contain substantive discussion, others, such as the sections on enforcement and alternative means, contain declarative statements with little or no explanation.

The economic impact statements in the report, for example, generally examine the economic effects of particular export controls.

Most of the statements provide data and analysis and help explain the costs to U.S. businesses of various export restrictions.

It must be noted, however, that it becomes more difficult to accurately assess the economic impact of foreign policy controls over time, as those controls not only decrease actual export sales but discourage industries from competing for future sales.

In addition, it is very difficult, if not impossible, to quantify the extent to which foreign purchasers may view the United States as an unreliable supplier because of the controls, and as a result, reduce their purchases of U.S. products.

Other sections of the report do not contain supporting analysis or explanation for the positions taken or statements made in them. For example, the enforcement section does not address the ability of the United States to enforce controls. The report generally contains the statement that enforcement presents no unusual problems and sometimes notes that reexports do create enforcement problems. No further discussion is included.

The section on alternative means is to specify the nature and results of any alternative means attempted or the reasons for extending the controls without attempting any such means. The report sometimes addresses alternative means in the context of alternatives for preventing U.S. exports, sometimes in a context of diplomatic means and sometimes in the context that makes its meaning unclear; however, the report does not indicate what range of alternative options were considered.

The 1985 amendments to the act gave increased emphasis to the foreign availability of controlled items. The original 1979 act only required that the President take all feasible steps to secure the cooperation of foreign governments in controlling the export of the controlled items. As modified in 1985, section 6(h) of the act now provides that if the President is not successful in securing this cooperation, and the Secretary of Commerce determines that there is sufficient availability so that denial of an export license would be ineffective in achieving the purposes of the controls, then the Secretary shall approve any required export license and remove the commodity from the export control list. The act does provide several exceptions, such as for controls against countries supporting international terrorism.

In extending the existing controls, the Commerce Department has apparently decided that if the purpose of the control is defined in the context of restricting U.S. exports or distancing the United States from a target country, then the existence of foreign availability does not render the control ineffective, because the foreign availability would not prevent achieving the control's purpose.

FOREIGN AVAILABILITY OF VIRTUALLY ALL CONTROLLED ITEMS

The Secretary's report indicates that there is widespread foreign availability of virtually all controlled items; however, because the foreign policy purpose of these controls is always drawn in the context of restricting U.S. items or distancing the United States from specific actions, the controls were extended irrespective of foreign availability.

Defining the purpose of the controls in this way appears to allow maintaining a control despite the foreign availability of the controlled item. While Commerce and State Department officials involved in preparing the report agreed with our assessment, they also emphasized that the foreign availability provisions are producing greater deliberations about the imposition and extension of controls.

With respect to the consultation process, we note that the act did not require consultation with industry on the extension of these controls; however, in keeping with the spirit of the act, the Commerce Department published a notice in the Federal Register on October 21, 1985, seeking public comment.

Nine parties responded to the notice with written comments. We contacted those nine parties to ascertain their assessment of the Federal Register as a way of consulting with industry. In general, the nine commentors said that they viewed the Federal Register as an unacceptable or ineffective form of consultation.

As a practical matter, foreign policy controls can be used for several purposes. These include influencing a country to modify behavior that the United States finds objectionable by imposing economic costs on the target of the controls; punishing a country for such behavior, by imposing economic costs, or symbolically demonstrating displeasure or distancing the United States from a specific country or behavior by restricting exports.

MANY CONTROLS ARE SYMBOLIC

When controls are only symbolic, the target of the controls incurs essentially no cost. We believe that many of the foreign policy controls extended in the Secretary's report are symbolic, because one, their stated purpose is to limit U.S. involvement with a specific country, and two, acknowledged foreign availability means the targets of the controls incur little or not costs. The costs of such controls are borne by American business which lose export sales to firms in other countries not participating in the export controls.

By requiring a series of determinations and other actions concerning the controls potential effectiveness, the 1985 act placed restrictions on how the President may use foreign policy export controls. When the purpose of the controls is to induce the country to modify its behavior or punish it for that behavior, it appears that the act does, as a practical matter, restrict Presidential discretion. This is because he would not be able to maintain controls when there is widespread foreign availability. When the purpose, however, is symbolic, it appears to us that the act leaves Presidential discretion intact. The practical result of the statutory change in such cases, is to require the administration to make a more eyes open decision than in the past as to the consequences of such actions.

As a consequence, when foreign availability or other considerations make foreign policy export controls unsuitable as a meaningful penalty, the President may simply choose a symbolic objective for the controls.

It is important to note, as a final point, that even when controls are imposed for symbolic purposes, they take on dimensions beyond

their original purpose when their renewal is considered. Once in place, as in the case of some of the controls just extended under the Secretary's report, their possible removal is viewed as signaling a lessening of U.S. resolve or commitment. Based on preliminary discussions, even if the control is symbolic and it is believed unlikely that it will affect the objectionable behavior which precipitated it, there is reluctance to remove these controls without some quid pro quo. In the meantime, U.S. businesses continue to bear costs while essentially no costs are imposed on the targets of the controls.

Consequently, we believe that it becomes that much more important, when either imposing foreign policy controls or extending them, that the administration fully explore and evaluate all realistic alternative means of achieving the foreign policy purpose and that the report to Congress include a full discussion of this effort.

Mr. Chairman, this completes my statement. I, of course, would be happy to try to answer any questions you may have.

[The complete prepared statement follows:]

UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C.

FOR RELEASE ON DELIVERY
EXPECTED AT 10:00 A.M.
February 19, 1986

STATEMENT OF

ALLAN I. MENDELOWITZ
ASSOCIATE DIRECTOR, NATIONAL SECURITY AND
INTERNATIONAL AFFAIRS DIVISION

BEFORE THE

SENATE COMMITTEE ON BANKING, HOUSING
AND URBAN AFFAIRS

ON

FOREIGN POLICY EXPORT CONTROLS

Mr. Chairman and Members of the Committee:

At your request, Mr. Chairman, we are here to present our views on the Secretary of Commerce's January 1986 report to the Congress on the extension of foreign policy export controls in effect prior to the passage of the Export Administration Amendments Act of 1985 (the Act) and to discuss the role assigned GAO by the Act. We have also addressed the consultation process used by the Department of Commerce in soliciting businesses' views on the controls' extension.

To assess the Secretary's report, we have initiated work to (1) review the Act and its background; (2) examine the report for compliance with the Act's requirements; (3) discuss its development with Commerce and State Department employees involved in its preparation; and (4) examine the documentation, analysis, and methodology supporting it. To obtain affected businesses' views on the consultation process, we contacted the nine parties providing comments on the controls extension. We did most of our work in preparation for this hearing at Commerce and would like to recognize the prompt and complete cooperation given to us by the Department. Because we have just begun our review of the Secretary's report, the views we are expressing today are preliminary.

THE 1985 EXPORT ADMINISTRATION AMENDMENTS ACT

In 1985, Congress passed the Export Administration Amendments Act of 1985, Public Law 99-64. This Act significantly modified the 1979 Export Administration Act. The

Act authorizes the President to establish export controls for economic, national security and foreign policy reasons. The new law made important changes in the President's authority with respect to foreign policy export controls.

The major aim of these changes was to limit the President's use of foreign policy controls that have an impact on U.S. exports. For example, under the new law the President may only impose, expand, or extend export controls if he first (1) consults with Congress, (2) makes certain determinations regarding the impact, significance and effectiveness of proposed controls, and (3) reports to Congress. The act also requires the President to consult with industry and foreign countries. For extensions of foreign policy controls in effect prior to the enactment of the 1985 act, the President does not have to make any determinations regarding the impact, significance and effectiveness of these controls. Rather, as under the previous law, he must only consider their impact, significance and effectiveness.

In addition, under the 1985 Act if the Secretary determines that goods and technology subject to foreign policy controls are available from foreign sources, he shall license exports of controlled items. There are, however, certain limitations on this provision's applicability, which I shall discuss shortly.

The 1985 act specifies that the report submitted to Congress before imposing, expanding, or extending controls address several subjects. The report must, in essence, specify

the purpose of the controls; detail the President's determinations (or for existing controls, considerations) and the bases for such determinations (or considerations) and any adverse foreign policy consequences; describe consultations with industry and other countries; specify what alternative means were considered or any reasons why such actions were not feasible; describe the availability of comparable foreign goods and technology and the results of efforts to secure foreign govenment cooperation; and indicate how the controls will significantly advance U.S. foreign policy.

The Act also provides that the General Accounting Office will assess each report. This requirement was added to assure that the executive has fully considered all the factors required by the new law and has kept Congress fully informed about its intentions.

A PRELIMINARY ASSESSMENT OF THE SECRETARY'S 1986 REPORT

This Committee, in its 1983 report on proposed amendments to the Export Administration Act, expressed dissatisfaction with prior export control reports. The Committee offered the view that these reports should be comprehensive and detailed and not a paper-writing exercise.

Reports to the Congress regarding the imposition, expansion or extension of controls have been required since enactment of the Export Administration Act of 1979. The reporting process is an incremental one, with each year's report using the previous year's as a base. Relevant personnel at Commerce and State were

will affect the objectionable behavior which precipated it, there is reluctance to remove those controls without some quid pro quo. In the mean time, U.S. businesses continue to bear costs while essentially no costs are imposed on the targets of the controls. Consequently, we believe that it becomes that much more important when either imposing foreign policy controls or extending them, that the administration fully explore and evaluate all realistic alternative means of achieving the foreign policy purpose and that the report to Congress include a full discussion of this effort.

Mr. Chairman, this completes my prepared statement. I will be happy to try to answer any questions you may have.

The CHAIRMAN. Thank you. Mr. Hansen.

STATEMENT OF LARRY L. HANSEN, EXECUTIVE VICE PRESIDENT, CORPORATE TECHNOLOGY, VARIAN ASSOCIATES, ON BEHALF OF SEMICONDUCTOR EQUIPMENT AND MATERIALS INSTITUTE

Mr. HANSEN. Thank you, Mr. Chairman.

I am the executive vice president of Varian Associates, a Palo Alto California-based manufacturer of semiconductor manufacturing equipment and scientific instruments.

I am pleased to appear before you today on behalf of the Semiconductor Equipment and Materials Institute Inc. [SEMI], of which I serve as a director. SEMI is a nonprofit trade association, which represents more than 800 U.S.-based high technology manufacturers, with approximnately 30,000 employees in the United States, and worldwide sales of something in excess of $5 billion.

Semiconductor equipment is that particular equipment that is used in the process of manufacturing integrated circuits which, of course, are used in computers. So our equipment is the beginning of that high-technology chain.

SEMI was an active participant during the debate over the recently approved amendments to the Export Administration Act, and the subcommittee and the entire Banking Committee should be commended for its efforts in that regard.

I am here today to address some particularly difficult problems that our industry is facing as a result of national security export controls and to describe where I believe the implementation process can be improved.

At the outset, I must reaffirm our industry's strong support for export controls on commercial goods and technologies, when those items have critical military significance and are not otherwise available to proscribed countries.

LOST SALES ARE ERODING TECHNOLOGICAL STRENGTH

What SEMI does vigorously oppose, however, are controls that are administered in a way that impairs our ability to compete in worldwide markets, but do not provide a comparable national secu-

rity benefit. Our greatest concern is that the lost sales due to unilateral export controls are eroding our ability to maintain U.S. technological strength. The cost of export controls on our high-technology industry should not be underestimated. SEMI companies export approximately 40 percent of their output. Success in foreign markets is crucial to the research and development efforts of most SEMI companies, most of whom are small businesses.

This situation is particularly critical in the semiconductor manufacturing equipment industry. When I testified before the House Armed Services Committee on this subject in July 1983, I stated that U.S suppliers of semiconductor equipment maintain about 70 percent of the sales in free world markets. I suggested then that burdensome and ineffective export controls would contribute to the erosion of our technological lead and that Japan would virtually equal the U.S. industry in sales as early as 1986 and 1987.

Unfortunately, my prediction is coming true. The U.S. share of the free world markets has now declined to levels approaching 50 percent and the trend is for further market share losses. Worse yet, technological leadership in some critical parts of the process has been taken over by the Japanese companies, critical parts like testing and lithography.

I assure that a significant part of the loss of technological and market position has been due to export controls that the U.S. industry alone has had to endure.

The adoption of the Export Administration Act Amendments of 1985 gave U.S. exporters hope for some relief from burdensome unilateral U.S. export controls. Our hopes, however, have been deflated as the regulations implementing the new act have been promulgated.

PRINCIPAL AREAS OF CONCERN

I would like to highlight some of the principal areas of concern.

The People's Republic of China has embarked on an ambitious plan to modernize its industrial base. The China market, especially in view of the recent worldwide slump in semiconductor sales, now represents the single greatest potential for increased exports of semiconductor manufacturing equipment.

Recently, new regulations implementing a CoCom agreement liberalized controls on the export of many commodities going to the People's Republic of China. Yet, in the area of semiconductor manufacturing equipment the result of the new regulations was to exclude a significant portion of the available United States equipment from the Chinese market.

The problems with the new Chinese regulations arise primarily because the regulations and the technical parameters defining allowable exports bear little relationship to the reality of semiconductor manufacturing equipment, how it is used and how it is purchased. In several places the regulations draw licensing limits based on technical standards, for example, line width control or batch versus single wafer processing, that do not adequately differentiate equipment capability or characterize equipment potential.

Devising appropriate technical parameters is of course a difficult challenge. It is virtually impossible for the technical people in

either the Department of Commerce or the Department of Defense to stay up to date with all of these fast moving technologies, and the technical parameters that have been established by them reflect this inability.

We believe that one of the principal reasons for the deficiencies in the treatment of semiconductor manufacturing equipment is the lack of meaningful consultations with the U.S. industry. Where the stakes for the U.S. industry are so high, in many cases going to the very survival of certain industry segments, we believe that it is inexcusable that the U.S. Government does not utilize industry expertise.

Our greatest concern, however, is that our competitors in CoCom countries will gain insurmountable footholds in the China market because the regulations will be interpreted inconsistently by CoCom members. Traditionally, the United States has taken the strictest interpretation of CoCom regulations, and we have no reason to believe that these China regulations will not be interpreted in the same manner. CoCom controls have simply not prevented embargoed equipment of our CoCom allies from going to the People's Republic of China.

The result is that many United States suppliers, including Varian, could be closed out of the market while the Chinese industrial base is being modernized by foreign, primarily Japanese, equipment. If this problem is not resolved quickly, the opportunity for United States industry to develop the China market would be lost.

Throughout the debate on the Export Administration Act amendments, this committee stressed the importance of foreign availability as an indispensable element of effective export controls. Under Senator Heinz' leadership, the Congress agreed, and the Senator's statements today on foreign availability were right to the mark.

The new legislation mandates major resources and personnel for a foreign availability office in the Department of Commerce and, through Executive action, also in the Defense Department. We support the actions launched by the Commerce Department, but unfortunately for U.S. high-technology industry, the impacts of those efforts have not made any substantive changes.

The first problem is that the U.S. Government is focusing exclusively on foreign availability in the Eastern bloc countries. Eastern bloc determinations are important, but many non-CoCom countries, on the other hand, represent crucial markets for our industries in which we face intense competition from foreign suppliers. Applying the concept of foreign availability to exports to these countries would greatly relieve the export licensing burden faced by U.S. companies and would open up a significant volume of business to U.S. companies.

For example, Hong Kong has three semiconductor factories. The United States officials believe these factories are at least in part owned by interests in the People's Republic of China, and they are probably correct. The United States Government treats these factories as if they were in the People's Republic of China, while other free world governments treat them as free markets.

These factories are not deprived of any technology or equipment, but United States suppliers of semiconductor equipment have lost

$10 to $20 million in sales in the past 2 years, primarily to Japanese suppliers.

The second problem is that the burden of proof of foreign availability ultimately rests with the U.S. industrial supplier. There are numerous occasions where applications have either been denied or have died of old age, where suppliers in both CoCom and non-CoCom countries have received orders and made shipments for the equipment.

This is extremely damaging, both from the lost business and from all of the fruitless efforts that are expended. This is why an effective foreign availability program is necessary.

Unilateral U.S. controls on comparable items available from non-U.S. sources in either free world countries or in the East bloc impose a significant burden on the competitiveness of U.S. exports without a comparable benefit to national security.

SEMI strongly urges this subcommittee to monitor foreign availability actions and to direct the Commerce Department and the Department of Defense to apply foreign availability on a country-by-country basis.

Another area emphasized in the act amendments which is causing significant difficulties is bulk licensing, specifically the new distribution license regulations. The new regulations are overly complicated, costly to implement, and have caused seemingly needless problems with foreign customers.

As a result, many smaller companies may be forced to resort to transaction-by-transaction licensing, an extremely inefficient and burdensome manner of doing business.

We are currently working to implement the new regulations, and because the regulations are not fully applicable as yet to foreign consignees the consequences of the Government's efforts cannot be fully measured. This is an effort that deserves close oversight scrutiny by this committee.

There are other areas I could discuss, but in the interest of time let me just summarize the recommendations.

SEMI supports the implementation of export controls to prevent the acquisition of critical equipment and technology by the U.S.S.R. and its allies. These export controls, however, must be administered in logical and effective ways.

SPECIFIC RECOMMENDATIONS

Specifically, we have the following recommendations:

There should be greater industry involvement in the development of technical parameters so that the regulations reflect the capabilities of the equipment and the realities of the marketplace. This includes providing greater opportunity for industry participation in the formulation of U.S. positions for CoCom and in regulatory rulemakings.

Second, foreign availability regulations should be extended to cover West-West trade, and existing regulations should be aggressively applied so there will be concrete improvements from foreign availability determinations.

Third, greater emphasis should be placed on strengthening multilateral enforcement of CoCom regulations, including the develop-

ment of consistently applied interpretations of CoCom regulations and, if necessary, imposing import restrictions in accordance with the revised act.

SEMI strongly urges the subcommittee to continue to monitor the implementation of the Export Administration Act Amendments of 1985.

Thank you for the opportunity of appearing before you and making the statement.

[The complete prepared statement follows:]

asked to review the 1985 report and indicate what, if any, changes were appropriate for the 1986 report. A cursory comparison of the two reports indicates that much of their language is similiar and sometimes identical.

Our preliminary analysis indicates that the report addresses each subject required by the Act. However, while several sections of the report, particularly the ones on economic impact and foreign availability, contain substantive discussion, others, such as the sections on enforcement and alternative means, contain declarative statements with little or no explanation.

The economic impact statements in the report, for example, generally examine the economic effects of particular export controls. Most of the statements provide data and analysis that help explain the costs to U.S. businesses of the various export restrictions. It must be noted, however, that it becomes more difficult to accurately assess the economic impact of foreign policy controls over time, as those controls not only decrease actual export sales but discourage industry from competing for future sales. In addition, it is very difficult, if not impossible, to quantify the extent to which foreign purchasers may view the United States as an unreliable supplier because of the controls and, as a result, reduce their purchases of U.S. products.

Other sections of the report do not contain supporting analysis or explanations for the positions taken or the

statements made in them. For example, the enforcement section does not address the ability of the United States to enforce the controls. The report generally contains the statement that enforcement presents no unusual problems and sometimes notes that reexports do create enforcement problems. No further discussion is included.

The section on alternative means is to specify the nature and results of any alternative means attempted or the reasons for extending the controls without attempting any such means. The report sometimes addresses alternative means in the context of alternatives for preventing U.S. exports, sometimes in the context of diplomatic means, and sometimes in a context that makes its meaning unclear. However, the report does not indicate what range of alternative options were considered.

FOREIGN AVAILABILITY

The 1985 amendments to the Act gave increased emphasis to the foreign availability of controlled items. The original 1979 Act only required that the President take all feasible steps to secure the cooperation of foreign governments in controlling the export of the controlled item. As modified in 1985, section 6(h) of the Act, now provides that if the President is not successful in securing this cooperation and the Secretary of Commerce determines that there is sufficient availability so that denial of an export license would be ineffective in achieving the purposes of the controls, then the Secretary shall approve any required export license and remove the commodity

from the export control list. The act does provide several exceptions, such as for controls against countries supporting international terrorism.

In extending the existing controls, the Commerce Department has apparently decided that if the purpose of the control is defined in the context of denying U.S. exports or distancing the United States from a target country, then the existence of foreign availability does not render the control ineffective because the foreign availability would not prevent achieving the control's purpose. The Secretary's report indicates that there is widespread foreign availability of virtually all controlled items. However, because the foreign policy purpose of these controls is always drawn in the context of denying U.S. items or distancing the U.S. from specific actions, the controls were extended irrespective of foreign availability.

Defining the purpose of the control in this way appears to allow maintaining a control despite the foreign availability of the controlled item. While Commerce and State Department officials involved in preparing the report agreed with our assessment, they also emphasized that the foreign availability provisions are producing greater deliberations about the imposition and extension of controls.

CONSULTATION WITH INDUSTRY

The 1985 Act requires the Secretary to consult with and seek advice from affected U.S. industries and appropriate advisory committees prior to imposing any foreign policy export

controls. This provision of the Act thus applies to new controls and not the extension of existing controls. As the 1986 report only extended existing controls, no prior consultation with industry was required.

The Department of Commerce did, however, place a notice in the Federal Register on October 21, 1985, seeking public comment on the controls' extension in accordance with the Department's own standard operating procedure and in an effort to work within the "spirit" of the Act. Nine parties responded to the notice with written comments. We believe that the discussion of public comments in the Secretary's report fairly characterizes and summarizes these comments. The primary focus of the comments, accounting for six of the nine responses, was on the sale of oil and gas equipment to the Soviet Union. Numerous arguments and much specific data were set forth, with each party urging the Department of Commerce to not extend these controls.

In discussions with this committee we agreed to solicit the views of commenters concerning the consultation process. We contacted each of the nine commenters to solicit their views on the acceptability and effectiveness of the consultation process used by the Department. We found that a majority of commenters, eight of nine, felt the solicitation of comments through the Federal Register was an unacceptable or ineffective form of consultation. The most common concerns were that it is often difficult to become aware of the Federal Register notice and that potential commenters are dissuaded from submitting comments

because they do not feel their comments affect policy. One respondent added that firms are often reluctant to comment for fear that negative comments would harm their chances for obtaining future licenses.

When asked to provide suggestions for changes in the consultation process, seven commenters advocated that a more active role be played by the Department of Commerce, either through the direct solicitation of opinions from affected industries or by holding public hearings in Washington and other selected cities.

OBSERVATIONS

As a practical matter, foreign policy controls can be used for several purposes. These include influencing a country to modify behavior that the U.S. finds objectionable by imposing economic costs on the target of the controls; punishing a country for such behavior by imposing economic costs; or symbolically demonstrating displeasure or distancing the United States from a specific country or behavior by denying U.S. exports. When controls are only symbolic, the target of the controls incurs essentially no cost. We believe many of the foreign policy controls extended in the Secretary's report are symbolic because: (1) their stated purpose is to limit U.S. involvement with a specific country, and (2) acknowledged foreign availability means the targets of the controls incur little or no costs. The costs of such controls are borne by American businesses, which lose export sales to firms in other

countries not participating in the export controls.

By requiring a series of determinations and other actions concerning the controls' potential effectiveness the 1985 Act placed restrictions on how the President may use foreign policy export controls. When the purpose of the control is to induce a country to modify its behavior or punish it for that behavior, it appears to us that the Act does, as a practical matter, restrict Presidential discretion. This is because he would not be able to maintain controls when there is widespread foreign availability. When the purpose, however, is symbolic, it appears to us that the Act leaves Presidential discretion intact. The practical result of the statutory change in such cases is to require the Administration to make a more "eyes open" decision than in the past as to the consequences of such actions. As a consequence, when foreign availability or other considerations make foreign policy export controls unsuitable as a meaningful penalty, the President may simply choose a symbolic objective for the controls.

It is important to note, as a final point, that even when controls are imposed for symbolic purposes, they take on dimensions beyond their original purpose when their renewal is considered. Once in place, as in the case of some of the controls just extended under the Secretary's report, their possible removal is viewed as signalling a lessening of U.S. resolve or commitment. Based on preliminary discussions, even if the control is symbolic, and it is believed unlikely that it

Statement of Larry L. Hansen
Executive Vice President
Varian Associates

On behalf

of the

Semiconductor Equipment and Materials
Institute, Inc.

Before the

Subcommittee on International Finance
and Monetary Policy

of the

Committee on Banking,
Housing and Urban Affairs
United States Senate

February 19, 1986

STATEMENT OF
LARRY L. HANSEN, EXECUTIVE VICE PRESIDENT
VARIAN ASSOCIATES

Mr. Chairman, my name is Larry Hansen. I am Executive Vice President of Varian Associates, a Palo Alto, California-based manufacturer of semiconductor manufacturing equipment. I have had considerable personal involvement in this business. My experience includes substantial knowledge of the export markets for this equipment and the U.S. Government's efforts to control shipments of equipment and related technology to potential adversaries of the United States.

I am pleased to appear before you today on behalf of the Semiconductor Equipment and Materials Institute (SEMI), for which I serve as a director, a non-profit trade association representing more than 800 U.S.-based high technology manufacturers with approximately 30,000 employees in the United States and worldwide sales of over $5 billion.

SEMI was an active participant during the debate over the recently adopted amendments to the Export Administration Act. This Subcommittee and the entire Banking committee should be commended for its tireless efforts to devise legislation that draws an appropriate balance between the need to prevent diversion of critical equipment to the USSR and its allies and allowing a free flow of trade so that U.S. companies can successfully compete in world markets.

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tions and, if necessary, imposing import restrictions as a means of furthering compliance by our COCOM allies.

SEMI strongly urges the Subcommittee to continue to monitor implementation of the Export Administration Act Amendments of 1985. Congress worked long and hard to pass legislation, yet the real impact is in the day-to-day administration of our export control laws. Industries such as semiconductor manufacturing and test equipment that are a mainstay of U.S. export performance simply cannot overcome many more problems in the administration of export controls.

We hope that the Subcommittee will press these issues with the Administration so that the balance achieved with such difficulty by the Export Administration Act Amendments of 1985 can be successfully implemented.

The CHAIRMAN. Thank you, Mr. Hansen.
Mr. Mills.

STATEMENT OF ROBERT G. MILLS, LEGISLATIVE DIRECTOR, U.S. DEFENSE COMMITTEE

Mr. MILLS. Thank you, Mr. Chairman.

With your permission, I would like to read a summarized version of my statement.

My concern in addressing this committee is that action be taken to staunch the flow of vital high technology to the Soviet Union.

The recently renewed and amended Export Administration Act made some needed improvements. Stiffer penalties for firms and individuals that subvert the law are a well-needed reform as is further clarification of the responsibilities of the Customs Service.

SERIOUS FLAWS IN THE LAW

However, there are some serious flaws in the law. The newly established Office of Foreign Availability is charged with determining whether foreign availability renders a license superfluous.

The problem is that often the existence of new or sensitive technology overseas cannot be determined. More important, although a product may be readily available, an incremental increase in its efficiency or applicability could make it highly sensitive.

Similarly, the elimination of requirements for business to acquire a new license for each shipment of the same type of technology or goods could permit ostensibly similar yet radically improved products to travel undetected.

By making it harder for the President to break contracts in the interest of national security, a serious impediment is created to the President's ability to coerce businesses and governments who cannot or will not guarantee the end use and end users of the product.

This provision, when coupled with the provisions of congressional review of Presidential bans and embargoes, virtually eliminates the President's availability to use trade controls to further foreign policy goals, including against countries that commit terrorism or grossly violate human rights.

Finally, there is little sense in charging the agency created to promote trade—that is, the Commerce Department—with controlling and inhibiting trade.

Similarly, enforcement of export controls should not be charged to the Commerce Department because the agency has little experience in traditional law enforcement and its specialized procedures and techniques.

The problem is exacerbated by the fact that the Customs Service and the Department of Defense both perform trade control functions, often in a manner that is parallel to or insulated from the Commerce Department.

The most effective way to deal with the control of critical technology is to create a separate independent agency with the responsibility of administering and enforcing export controls.

This proposal was made by you, Senator Garn, in the Strategic Trade Act of 1983, which would have created the Office of Strategic Trade [OST], whose head would be a member of the National Security Council.

There would be little or no cost to the American taxpayer in creating the Office of Strategic Trade because its budget would be approximately the same as that of the Commerce Department's Office of Export Administration and Export Enforcement, offices which the OST will supersede.

The Soviets have given top priority to acquiring Western technology. It is therefore incumbent upon the United States to treat this threat with equal attention.

Establishing the OST raises the level of priority of the export control operation by establishing a single task, high visibility agency represented directly at the National Security Council.

INTERAGENCY RIVALRY

The creation of an independent OST would also eliminate the basis for interagency rivalry between the Commerce Department, the Customs Service, and the Department of Defense.

It is true that these rivalries have been reduced in the last year through congressional action and Presidential direction.

However, without a single agency with clear responsibility and authority to take the lead in export controls, these rivalries will persist in causing, at best, discouragement and frustration amongst agency professionals and, at worst, the threat of serious breaches of national security.

The rivalries and the attendant ignorance of one agency not knowing what another is doing also seriously impair the ability of the United States to negotiate and coordinate controls with allies.

The creation of OST would give the United States a greatly strengthened position from which to work with individual allies and CoCom.

The U.S. dependence on emerging technology to maintain our national security is a fundamental fact for those of us concerned with defense and foreign policy issues. It is imperative that the United States make all necessary efforts to withhold from the Soviet Union the fruits of our freee enterprise system, which in Soviet hands would be turned against us in engines of destruction.

The cost to the United States of responding to the Soviet military buildup far exceeds the cost of effectively controlling high-tech exports.

Therefore, I urge this committee and Congress as a whole to introduce and pass legislation, like the Strategic Trade Act of 1983, that will make export control a top priority by creating a single, independent agency with the authority to effectively enforce the interests of national security.

I strongly urge that you initiate this legislation as soon as possible.

Thank you very much.

[The complete prepared statement follows:]

I am here today to address some particularly difficult problems that our industry is facing as a result of national security export controls and to describe where I believe the Export Administration Act Amendments are not being properly implemented.

At the outset, I must reaffirm our industry's strong support for export controls on commercial goods and technologies when these items have critical military significance and are not otherwise available to proscribed countries. What SEMI vigorously opposes are controls that are administered in a way that impairs our ability to compete in worldwide markets but does not provide a comperable national security benefit. Our greatest concern is that the lost sales due to excessive export controls are eroding our ability to maintain U.S. technological strength. If our foreign competitors take the lead in such areas as semiconductor manufacturing and test equipment, the United States' ability to control exports of state-of-the-art technologies to proscribed countries will be greatly diminished along with our ability to maintain technological superiority in defense weapons.

The costs of export controls on our high-technology industries should not be underestimated. SEMI companies export approximately 40 percent of their output. Success in foreign markets is crucial to the research and development efforts of most SEMI companies, many of whom are small businesses. When these companies lose sales because

of overreaching export control regulations or are stigmatized as unreliable suppliers because of long delays in the licensing process, they will not generate the resources necessary to sustain innovation.

This situation is particularly critical in the semiconductor manufacturing equipment industry. When I testified before the House Armed Services Committee in July, 1983, U.S.-based suppliers of semiconductor equipment maintained about 70 percent of the sales in free world markets. I suggested then that burdensome and ineffective export controls would contribute to the erosion of our technological lead and that Japan would virtually equal the U.S. industry in sales as early as 1986-1987. Unfortunately, my prediction is coming true. The U.S. share of the free world markets has now declined to levels approaching 50 percent, and the trend is for further market share losses. Worse yet, technological leadership in some critical parts of the process has been taken over by Japanese companies. I assure you that a significant part of this loss of technological and market position has been due to export controls that the U.S. industry alone has had to endure.

Gap Between Legislation and Regulation

The adoption of the Export Administration Act Amendments of 1985 gave U.S. exporters hope for some relief from burdensome unilateral U.S. export controls. Our hopes, however, have been greatly deflated as regulations imple-

menting the new Act have been promulgated. I would like to highlight some principal areas of concern.

New China Regulations

The People's Republic of China has embarked on an ambitious plan to modernize its industrial base. The China market, especially in view of the recent worldwide slump in semiconductor sales, now represents the single greatest potential for increased exports of semiconductor manufacturing equipment.

Recently, new regulations implementing a COCOM agreement liberalized controls on the exports of many commodities going to the PRC. Yet, in the area of semiconductor manufacturing equipment, the result of the new regulations was to exclude a significant portion of the available U.S. equipment from the Chinese market.

The problems with the new China regulations arise primarily because the regulations and the technical parameters defining allowable exports bear little relationship to the reality of semiconductor manufacturing equipment - how it is used and how it is purchased. In several places, the regulations draw licensing limits based on technical standards, for example, line width and batch vs. single wafer processing, that do not adequately differentiate equipment capability or characterize equipment potential.

Devising appropriate technical parameters is, of course, a difficult challenge. It is not possible for the technical people in either the Department of Commerce or the Department of Defense to stay up to date with all of these fast-moving technologies, and the technical parameters established by them are most often either ambiguous or meaningless. We believe one of the principal reasons for the deficiencies in the treatment of semiconductor manufacturing equipment is the lack of meaningful consultations with U.S. industry. Where the stakes for the U.S. industry are so high - in many cases going to the very survival of certain industry segments - we believe it is inexcusable that the U.S. Government does not utilize industry expertise.

Our greatest concern, however, is that our competitors in COCOM countries will gain an insurmountable foothold in the China market because the regulations will be interpreted inconsistently by COCOM members. Traditionally, the United States has taken the strictest interpretation of COCOM regulations and we have no reason to believe that these China regulations will not be interpreted in the same manner. COCOM controls have simply not prevented embargoed equipment of our COCOM allies from going to the PRC.

The result is that many U.S. suppliers, including Varian, could be closed out of the market while the Chinese industrial base is being modernized by foreign, primarily Japanese, equipment. If this problem is not resolved

quickly, the opportunity for U.S. industry to develop the China market will be lost.

Foreign Availability

Throughout the debate on the Export Administration Act Amendments, U.S. industry stressed the importance of foreign availability as an indispensable element of effective export controls. Under Senator Heinz's leadership, the Congress agreed. The new legislation mandates major resources and personnel to a foreign availability office in the Commerce Department and also in the Defense Department. Unfortunately for U.S. high technology industry, the impact of those efforts has not made any substantive changes.

The first problem is that the U.S. Government is focusing exclusively on foreign availability in the East Bloc countries. Many non-COCOM countries, on the other hand, represent crucial markets for our industries in which we face intense competition from foreign suppliers. Applying the concept of foreign availability to exports to these countries would greatly relieve the export licensing burden faced by U.S. companies, and would open up a significant volume of business to U.S. companies.

For example, Hong Kong has three semiconductor factories. U.S. officials believe these factories are at least in part owned by interests in the PRC, and they are probably correct. The U.S. Government treats those factories as if they were in the PRC, while all other free world governments treat them as free markets. These factories are not deprived of any technology or equipment, but U.S. suppliers of semiconductor equipment have lost $10-20 million in sales in the past two years.

The second problem is that the burden of proof of foreign availability ultimately rests with the U.S. industrial supplier. There are numerous cases where applications have either been denied or have died of old age, where suppliers in both COCOM and non-COCOM countries have gotten the business. This is extremely damaging, both from the lost business and from all of the fruitless efforts expended. This is why an effective foreign availability program is necessary.

Unilateral, U.S. controls on comparable items available from non-U.S. sources in either free world countries or the East Bloc impose a significant burden on the competitiveness of U.S. exporters without a comparable benefit to national security. SEMI strongly urges this Subcommittee to monitor foreign availability actions and to direct the Commerce Department and the Department of Defense to apply foreign availability on a country-by-country basis.

Bulk Licensing

Another area emphasized in the Act's amendments which is causing significant difficulties is bulk licensing, specifically, the new distribution license regulations. The new regulations are overly complicated, costly to implement and have caused seemingly needless problems with foreign customers. As a result many smaller companies may be forced

to resort to transaction by transaction licensing, an extremely inefficient and burdensome manner of doing business.

We are currently working to implement the new regulations and because the regulations are not fully applicable as yet to foreign consignees, the consequences of the government's efforts cannot be fully measured. This is an area that deserves close oversight scrutiny by the Subcommittee.

Uneven Application of COCOM Rules

A final area where there are significant problems is in the uneven application of COCOM rules. U.S. companies often have been prohibited from making certain sales while their foreign competitors in COCOM countries have been able to supply these customers. These lost sales to our foreign competitors are particularly damaging. Because of the high margins and profitability from sales to the PRC and the East Bloc, foreign suppliers are able to discount substantially their prices in free world markets to the detriment of U.S. companies.

Although some may be due to unscrupulous exporters, these sales for the most part appear to be the result of differing interpretations of COCOM rules and the failure of our COCOM allies to apply the export controls extraterritorially, that is, to control reexports from non-COCOM countries. Moreover, long delays in the U.S. licensing process have added to the discrepancy of treatment between U.S. exports and other COCOM country exports. To prevent irrepa-

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Henry L. Walther
President

Statement By

Robert G. Mills
Legislative Director
United States Defense Committee

At A Hearing On
The Export Administration Act

before the
SENATE COMMITTEE ON BANKING, HOUSING,
AND URBAN AFFAIRS

February 19, 1986

3238 Wynford Drive, Fairfax, Virginia 22031

Mr. Chairman:

My name is Robert G. Mills and I am Legislative Director of the United States Defense Committee.

The United States Defense Committee is a public interest organization dedicated to a strong national defense and foreign policy.

We are an organization of over 134,000 Americans who come from all walks of life; machinists, farmers, small entrepreneurs, doctors, lawyers, active and retired service personnel.

What binds all these people together is a commitment to preserve and defend our national security.

My concern in addressing this Committee is that action be taken to staunch the flow of vital high-technology to the Soviet Union.

This technology is invariably turned against the U.S. and

to withhold from the Soviet Union those fruits of our free enterprise system which, in Soviet hands, would be turned against us in engines of destruction.

The costs to the U.S. of responding to the Soviet military build-up built with Western technology far exceeds the cost of effectively controlling high-tech exports.

Therefore, it is vital that the Congress introduce and pass legislation, like the Strategic Trade Act of 1983, that will make export control a top priority by creating a single, independent agency with the authority to effectively enforce the interests of national security.

I strongly urge this Committee to initiate this legislation immediately.

The CHAIRMAN. Thank you, Mr. Mills.

Mr. Mendelowitz, this is the first year that the GAO is required by law to review the report on foreign policy export controls.

Have you found the legislative authority and the cooperation of the executive branch adequate for you to do your job as required in the 1985 amendments?

ADEQUATE AUTHORITY TO DO THE JOB

Mr. MENDELOWITZ. We believe we have adequate authority to carry out our responsibilities. I would like to recognize, in response to your question, the fact that we received very prompt and complete cooperation from the Department of Commerce for the preparation of this testimony.

The CHAIRMAN. Mr. Hansen, I recognize the difficulty of trying to achieve that balance point between restricting the sale of high tech to help our adversaries and unduly restricting sales that are not in that category.

I still feel that what I tried to do for some time—and Mr. Mills just talked about—is still the best answer: a establishment of a separate Office of Strategic Trade. I don't really believe that we are ever going to change that balance as long as we have competing agencies.

I don't criticize them necessarily for their balance. The Commerce Department, by its very nature, is supposed to promote commerce in this country. Defense is supposed to protect the country. State is supposed to exercise our foreign policy.

As long as you have those biases, Defense will overly protect. They will try to restrict everything they can. Commerce will try to sell more than they should. And as for the State Department, I have never figured out whether they know what they are supposed to be doing or not.

So I still haven't changed my mind, even though I don't have the votes.

Mr. Mills, there is no point in introducing the bill. I have done that before, and it has no chance of passage, but I still believe that an independent agency would do a better job than would mixing all of these Departments with their separate biases, which you are not going to get rid of. I think that is where a lot of your conflicts come from.

You think the act was an improvement, but you don't like the regulations and trying to balance the different objectives. Unfortunately, I am in the minority on this issue. But the longer time goes on, I do feel that a separate Office of Strategic Trade would have been something that would have worked and been able to get away from these biases of various agencies.

I don't know. We will continue to struggle along.

My own analysis is that the Export Administration Act was some improvement last year but not nearly as much as I would like to have seen in both areas, either in restricting the flow of high tech or in reducing the burdensome licensing provisions and delays that go along with too much regulation in areas that are not sensitive to the Soviet Union.

Mr. HANSEN. Senator, I believe what you say is true. I happen to agree with that specific point as well.

However, I do believe that this committee can have some oversight to some of the duplicative efforts that are going on and to some of the responses that are going on to the law in different places to help it conform more strictly to the act.

For example, foreign availability, insofar as I understand from the act, applies not just to the Eastern bloc; it seems to me that getting foreign availability to some place like Hong Kong should not be something that should take 3 or 4 years.

Some of these issues can be helped along by the oversight from this committee, to help in some relief of the duplications that are going on in the administration of the act and in doing away with some of the regulations by which it is administered.

The CHAIRMAN. I agree. We will continue to try. It has been one of the more frustrating aspects of my tenure on this committee.

This has been a problem I have been working on for 11 years, and I feel very frustrated that the only results of that are the Export Administration Act Amendments of 1985 and the continual promises from whomever is running the Commerce Department that they are going to do better.

And they have. There has been some improvement, but I think it has been minimal compared to what we should have had.

Gentlemen, thank you very much. We appreciate your willingness to testify.

The committee is adjourned.

[Whereupon, at 11:25 a.m., the committee was adjourned sine die.]

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its allies, costing extra billions upon billions of dollars to defend this country and deter the Soviets.

Although the renewal and amendment of the Export Administration Act last year accomplished some good, it did not address the seriousness of high-tech transfer nor did it provide an effective structure for export control.

I, therefore, urge this Committee and the Congress as a whole to introduce and pass legislation creating an independent agency with the authority to effectively control the export of sensitive technology to the Soviet Union.

The Soviet Union has given top priority and devoted major resources to acquiring Western technology for use in their military systems.

Over the last twenty-five years the Soviets have saved billions of dollars and countless research man-hours by acquiring, legally and illegally, advanced Western technology.

In 1961 the Soviet Union attempted to buy precision ball

bearing grinders manufactured by the Bryant Chucking Grinder Corporation.

These grinders manufacture ball bearings to a remarkably precise 25 millionth of an inch, the precision needed to build the inertial navigation systems for multiple warheads.

President Kennedy denied the Soviets this purchase on grounds of national security.

However, the sale of 164 of these grinders to the Soviet Union was authorized in 1972.

Shortly thereafter, the Soviets began deploying a new generation of ICBM's which were 10 times more accurate than their predecessors, and which, for the first time, were capable of carrying multiple warheads (MIRV's).

Because of this technology the U.S. is now threatened with a Soviet first-strike force capable of delivering a devastating blow to America's nuclear deterrent.

Not long after, the Ford Motor Company and other Western companies sold more than $1.5 billion in sophisticated, al-

though "nonmilitary", technology to the Soviets to build the Kama River Truck plant.

The ZIL-131 cargo trucks built at this plant rolled across the Soviet-Afghanistan border carrying Soviet troops in 1979. To this day the Red Army continues to occupy Afghanistan and to brutally oppress the Afghan people.

By using corporations and businessmen willing to subvert the law and license requirements, the Soviets nearly obtained a legally exported VAX 11/782 in 1983. The VAX 11/782 is a high speed computer critical to the manufacturing of advanced targeting and guidance systems.

The Department of Defense estimates that the Soviets saved $55 million and gained five years in the research and development of fire control radars by acquiring the documentation of the F-18.

In fact, virtually every Soviet weapon has benefited from the acquisition of Western technologies.

In spite of this well-known fact, Congress has been unable, or unwilling, to take serious steps to amend the law on export controls, the Export Administration Act.

There are, of course, appreciable dilemmas.

The need to withhold crucial technology from the Soviets may interfere with American business' ability to compete in emerging technologies.

Many "dual use" technologies, or low-tech technologies, pose no immediate security risk and are readily available on foreign markets and through open technical journals. Nevertheless, these technologies are a top target for Soviet acquisition.

However, when compared to the cost, both material and political, of defending our national security from the massive Soviet military build-up, the cost of restricting trade pales.

Since the Soviets' military machine is in most respects numerically superior to the West's, the need to maintain a significant technological edge is vital.

The Soviets have made, and are making, great strides to overtake the West in advanced technology.

No method of research will yield the advanced high-technology the Soviets seek quicker or more efficiently than simply acquiring it from the West.

Considering the Soviet determination to acquire Western

technology, the recently renewed and amended Export Administration Act is inadequate.

There were some improvements made by PL-99-64.

Stiffer penalties for firms and individuals that subvert the law are a well needed reform as is further clarification of the responsibilities of the Customs Service.

However, there are some serious flaws in the law.

The newly established Office of Foreign Availability is charged with determining whether "foreign availability" renders a license superfluous. The problem is that often the existence of a new or sensitive technology overseas cannot be determined. More important, although a product may be readily available, an incremental increase in its efficiency or applicability could make it highly sensitive.

Similarly, the elimination of requirements for businesses to acquire a new license for each shipment of the same type of technology or good could permit ostensibly similar yet radically improved products to travel undetected.

By making it harder for the President to break contracts in the interest of national security, a serious impediment is

created to the President's ability to coerce businesses and governments who cannot, or will not, guarantee the end use and end users of the product.

This provision, when coupled with the provision of congressional review of Presidential bans and embargoes, virtually eliminates the President's ability to use trade controls to further foreign policy goals, including against countries that commit terrorism or grossly violate human rights.

Finally, the simple fact is that there is little sense in charging the agency created to promote trade -- that is, the Commerce Department -- with controlling and inhibiting trade.

Similarly, enforcement of export controls should not be charged to the Commerce Department because the agency has little experience in traditional law enforcement and its specialized procedures and techniques.

This problem is exacerbated by the fact that the Customs Service and Department of Defense both perform trade control functions, often in a manner that is parallel to or insulated from the Commerce Department.

The most effective way to deal with the control of

critical technology is to create a separate and independent agency with the responsibility of administering and enforcing export controls.

This proposal was made by Senator Garn in the Strategic Trade Act of 1983, which would have created the Office of Strategic Trade (OST) whose head would be a member of the National Security Council.

There would be little or no cost to the American taxpayer in creating the Office of Strategic Trade because its budget would be approximately the same as that of the Commerce Department's Office of Export Administration and Export Enforcement, offices which the OST will supercede.

The Soviets have given top priority to acquiring Western technology. It is, therefore, incumbent upon the U.S. to treat this threat with equal attention.

Establishing the OST raises the level of priority of the export control operation by establishing a single task, high visibility agency represented directly at the National Security Council.

The creation of an independent OST would also eliminate

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